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RECORD, CASE No. 15,069.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1099.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY, APPELLANT,

vs.

JOHN FEATHERSTONE ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED JUNE 30, 1892.

IN CONCLUSION.

The plaintiff in error has no standing in this Court simply because it is a corporation. It has no greater right to appear at the bar of this Court as a suppliant for a construction of the contract between it and the State of Illinois than has any citizen of that State who has been worsted in a contest with a neighbor in the highest court of his State over a contract in relation to a crib of corn or a drove of hogs.

When the Illinois Central Railroad Company accepted its charter from the hands of the State of Illinois it accepted it with the implied agreement on its part that in case any dispute should arise between it and the other contracting party in relation to the construction of such charter it would be bound by such construction as might be given to that instrument by the highest court of that State. That implied agreement forms part of such charter, and therefore is part of the contract which this Court is asked to construe.

It is respectfully submitted on behalf of defendant in error:

1. That the writ of error herein should be dismissed, or

2. That if the cause shall be retained the judgment of the supreme court of Illinois should be in all things affirmed.

E. S. McDONALD,
Attorney for Defendant in Error.

HUGH CREA,
Of Counsel.

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a United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1892.

DE LA VERGNE REFRIGERATING MACHINE COMPANY, Appellant,
vs.
JOHN FEATHERSTONE, GEORGE FEATHERSTONE, ARTHUR J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz, Appellees. } No. 52.

Messrs. Banning, Banning & Payson, Mr. Hubert A. Banning, and Mr. Edmund Wetmore, for appellant.
Messrs. Bond, Adams & Pickard and Mr. Francis Lachner, for appellees.

Appeal from the circuit court of the United States for the northern district of Illinois.

b In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

DE LA VERGNE REFRIGERATING MACHINE COMPANY
vs.
JOHN FEATHERSTONE, GEORGE FEATHERSTONE, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz. } In Chancery.

Messrs. Banning, Banning & Payson, Mr. Hubert A. Banning, and Mr. Edmund Wetmore, for complainant.
Messrs. Bond, Adams & Pickard and Mr. Francis Lachner, for defendants.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, northern division, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Honorable Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Monday, the seventh day of March, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and ninety-two, and of our Independence the one hundred and sixteenth year.

EDWARD A. DRUMMOND, *Clerk.*

DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE, GEORGE FEATHERSTONE, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the seventh day of January, 1892, came the complainant, by its solicitors, and filed in the office of the clerk

of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its bond for costs and bill of complaint in said entitled cause; which said bond and bill are in the words and figures following, to wit:

2 *Bond for Costs.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

Circuit Court —, — Term, A. D. 189–.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.* } In Equity.

Bond for costs. Filed January 7, 1892.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainant of any costs ordered or adjudged to be paid by it I hereby agree and stipulate that execution may issue against my property for any costs taxed against it.

Dated this seventh day of January, A. D. 1892.

EPHRAIM BANNING.

(Endorsed:) Filed January 7, A. D. 1892. Wm. H. Bradley, clerk.

Circuit Court of the United States for the Northern District of Illinois.

To the honorable the judges of the circuit court of the United States for the northern district of Illinois:

The De La Vergne Refrigerating Machine Company, a corporation organized and doing business under the laws of the State of New York and a citizen of the State of New York, brings
3 this its bill of complaint against John Featherstone, George Featherstone, Arthur J. Featherstone, Jacob W. Shinkle, Clarence A. Knight, and Otto C. Butz, all citizens and residents of the State of Illinois and inhabitants of the northern district thereof.

And thereupon your orator complains and says that it is a corporation organized and doing business under and by virtue of the laws of the State of New York; that your orator was incorporated on or about the 29th day of December, 1880, under the name of The De LaVergne and Mixer Refrigerating Company, as by reference to a certified copy of its certificate of incorporation, hereunto annexed as a part of this bill and marked "Exhibit A," will more fully appear; that the name of your orator was subsequently duly changed by law to that of The De La Vergne Refrigerating Ma-

chine Company, as by reference to a certified copy of the order changing the name of your orator, which is hereunto annexed as a part of this bill and marked "Exhibit B," will more fully appear.

That the objects for which your orator was incorporated and organized were to manufacture, sell, and put in operation machinery and apparatus for cooling beer and other substances, for making ice, and for refrigerating purposes; that from and since the date of its incorporation the business of your orator has been and is to construct, manufacture, sell, and erect refrigerating and ice-making machines and plants embodying various patented improvements. In the regular course of its business, and for the purpose of increasing and extending the same so that it might become profitable to your orator and equally beneficial to the public, your orator has expended large sums of money in the development of improvements and in the procurement of patents therefor, and also in and about the acquisition of the title to such patents as were considered to be valid and deemed to be of value and importance to your orator in its said business.

Your orator on information and belief alleges that prior to the 29th day of October, 1875, one James Boyle was the first, sole, and original inventor of certain new and useful improvements in gas liquefying pumps, and prior to said date was engaged with one Thomas L. Rankin in the development of said improvements and in an undertaking to build ice-making and refrigerating machines which would embody the same and utilize the benefits and advantages thereof; that in pursuance of this purpose a contract was entered into prior to said date, in which the said Rankin agreed to advance money to apply for and obtain a patent on said invention and to build a machine embodying the same, and in consideration thereof the said Boyle agreed to assign to said Rankin a 4 half interest in and to said invention and patent; that the said improvements so invented by the said James Boyle, as aforesaid, were not known or used by others and had not been patented or described in any printed publication in the United States or in any foreign country prior to his invention thereof, and had not been in public use or on sale in the United States for more than two years prior to the making and filing by the said James Boyle of an application for a patent therefor in due form of law, as your orator verily believes.

Your orator on information and belief further alleges that on or about said 29th day of October, 1875, the said James Boyle duly executed the necessary papers for an application for letters patent of the United States for said improvements, and in his petition therefor did pray that Alexander & Mason, of Washington, D. C., be recognized as his sole, lawful solicitors and advocates, for him and in his name to solicit and advocate, amend his application, to receive the patent if granted, and in all other respects to do all the petitioner, said James Boyle, could do if acting in the premises; that thereafter and on or about the 24th day of November, 1875, the said application papers were filed in the United States Patent

Office for a patent for the aforesaid improvements, the expenses pertaining to the same being paid by said Thomas L. Rankin.

Your orator on information and belief further alleges that on or about the 27th day of November, 1875, after the filing of said application in the United States Patent Office and before the allowance of a patent thereon, the said James Boyle died, leaving him surviving a widow, Theresa M. Boyle, and four children; thereafter and on or about the 2d day of December, 1875, the said Theresa M. Boyle, who was then acting as executrix *de son tort* of the said James Boyle, deceased, and as guardian by nature of said children, entered into an agreement with the said Thomas L. Rankin, wherein and whereby the said Rankin agreed to build the ice machine commenced by himself and said James Boyle and to provide for said widow while said machine was under construction; and also agreed to press the applications for patents on the part of said machine claimed by said James Boyle, and in case said machine was a success and said patents were obtained said Rankin was to use his best efforts to introduce the same, and to divide with said Theresa M. Boyle the profits of said business until she should have received five thousand dollars for her share, after which she agreed to release and assign to said Rankin any further interests in said patents to be obtained and the machine then in use, as by reference to a certified copy of the record of said agreement in the United States Patent Office, which is hereunto annexed as a part of this bill and marked "Exhibit C," will more fully and at large appear.

Your orator on information and belief further alleges that the said Thomas L. Rankin, being then interested in the construction of the said machine and in the aforesaid application of said James Boyle for a patent on said improvements, did thereupon and thereafter proceed to carry out his part of the said agreement to the extent of providing for the said widow and her children until the following May, and did also complete the said machine at his own expense, and did assume the responsibility for the Patent Office and solicitors' fees in the further prosecution of the said application, being in communication with the said Alexander and Mason, who continued to act in the premises under his direction as they had theretofore done, as well as under the authority of said Theresa M. Boyle, then vested in him; that said application was diligently prosecuted by said solicitors under the direction of said Rankin, as aforesaid, and said application was acted upon by the examiner in charge thereof on the 15th day of December, 1875, said examiner making certain objections affecting the scope of the specification and claims in the form in which the same had been executed by the said James Boyle and subsequently filed in the Patent Office as aforesaid; that thereafter and on, to wit, December 20, 1875, said Alexander and Mason, acting as such solicitors, and under authority of said Rankin and Theresa M. Boyle, as aforesaid, did overcome the objections thereto and cure such defects by a proper amendment, and shortly thereafter, to wit, January 4, 1876, said application was allowed; that on or about March 9, 1876, said Thomas L. Rankin was appointed

temporary administrator of the estate of said James Boyle, deceased, and thereafter, to wit, March 18, 1876, paid the final Government fee of $20 on said application and the balance due said solicitors for their services, and a patent was thereon issued bearing date March 21, 1876, and numbered 175,020, wherein and whereby there was granted unto the said James Boyle, his heirs or assigns, for the term of seventeen years from the said 21st day of March, 1876, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof, as by reference to a certified copy of said letters patent, hereunto annexed as a part of this bill and marked "Exhibit D," and a certified copy of the file-wrapper and contents of the application on which the same were issued, also hereunto annexed as a part of this bill, will more fully and at large appear.

6 Your orator on information and belief further alleges that the said Theresa M. Boyle, on or about July 5, 1876, presented her petition to the circuit court of Harris county, in the State of Texas, in which she recited the death of said James Boyle and stated that her said husband at the time of his death was engaged in business with the said Rankin, and that they were joint owners of certain improvements and patents then about to be obtained for an ice machine, the value of which she alleged to be contingent and indefinite, and in said petition referred to the said Rankin as having, on said 9th day of March, 1876, taken out temporary letters of administration, and that she, as surviving wife of James Boyle, deceased, was entitled to priority in the management and control of said estate, and prayed that said temporary letters granted to said Rankin might be revoked, and that she might be permitted to qualify as survivor of the community estate of herself and her said deceased husband, James Boyle; and that said Theresa M. Boyle did thereafter file in said court an inventory and appraisement of the estate of James Boyle, as survivor of the community estate of James and Theresa Boyle, viz., one-half interest in and to a patent right for an improvement called "the Boyle improvement" in an ice machine known as the Rankin and Boyle ice machine, held and owned jointly and equally with said Thomas L. Rankin.

Your orator on information and belief further alleges that the said Theresa M. Boyle, on or about the 2d day of January, 1878, did, without the knowledge of the said Thomas L. Rankin, assume to deal with the title to said patent as the administratrix of said estate and in her individual capacity, and did, on or about said date, assign and transfer unto one William B. Bushnell all the right, title, and interest which she had for herself and as the administratrix of said estate in said invention secured by said letters patent numbered 175,020, which assignment was duly recorded in the United States Patent Office on the 15th day of January, 1878, in Liber J 22, page 226, of Transfers of Patents, as by reference to a certified copy of all instruments of writing found of record up to and including October 14, 1891, under or relating to said letters patent, which is hereunto annexed as a part of this bill and marked "Exhibit E," will more fully and at large appear; that thereafter, on or about

the 21st day of October, 1878, the said William B. Bushnell did grant and convey unto Eliza H. Bushnell all his right, title, and interest in and to the said letters patent by an instrument of writing, which was also recorded in the United States Patent Office on or about the 3d day of December, 1878, in Liber R 23, at page
7 107, of Transfers of Patents, as by reference to said "Exhibit E" will more fully and at large appear; that on or about the 23d day of October, 1878, the said Eliza H. Bushnell did assign, transfer, and set over to Samuel W. Adams her title in and to said letters patent by an instrument in writing, which was also recorded in said United States Patent Office January 13, 1879, in Liber X 23, at page 354, of Transfers of Patents, as by reference to said "Exhibit E" will more fully and at large appear; that the said assignment from Eliza H. Bushnell to said Samuel W. Adams is stated on the face thereof to be in trust according to the terms and conditions of a certain declaration of trust bearing even date therewith, but which declaration of trust does not appear to have been recorded, and the contents thereof are unknown to your orator except in so far as it has received verbal statements in relation thereto, and your orator believes that if said declaration of trust shall be disclosed unto your honors important facts in respect of your orator's rights in the premises will be thereby proven, and your orator charges that such declaration of trust is well known to the defendants herein, and that one or more of them has in his or their possession a copy therof, and they can, if they see fit, produce the original thereof here in court whenever called upon so to do.

Your orator on information and belief further alleges that on or about the 5th day of December, 1878, the defendant Jacob W. Skinkle, together with one David Boyle, a brother of the said James Boyle, and one Robert L. Tatham, proposing to form a corporation under the laws of the State of Illinois, filed in the office of the secretary of state of said State a certificate for the incorporation of the Boyle Ice Machine Company; that the object for which said corporation was to be formed was the manufacture, operation, and sale of ice machines and refrigerating apparatus and the manufacture and sale of ice; that thereupon the said secretary of state did issue to said Jacob W. Skinkle, David Boyle, and Robert L. Tatham a license to open books of subscription for the capital stock of said company, and that thereafter such proceedings were had under said license and in pursuance of the laws of said State as to effect the organization of said company and the election as directors thereof for the period of one year of said Jacob W. Skinkle, David Boyle, and William B. Bushnell, and on the 9th day of December, 1878, said secretary of state did issue his certificate to the effect that the said Boyle Ice Machine Company was a legally organized corporation under the laws of the State of Illinois; all of which acts and proceedings in relation thereto will more fully and at large appear by reference to a certified copy thereof, hereunto annexed as a part of this bill and marked "Exhibit F."

8 Your orator on information and belief further alleges that at or about the time of the organization of said The Boyle Ice

Machine Company it was represented that said letters patent No. 175,020 were owned by the said Eliza H. Bushnell, and that the title thereto was transferred from her to the said Samuel W. Adams in trust partly for the use and benefit of the said corporation; and your orator on information and belief alleges that all parties interested in the organization of said company fully believed that the title to said letters patent was valid and perfect, and that the said patent was of itself valid and was one consideration for the investment of capital in the business of said Boyle Ice Machine Company; and your orator charges that the acquisition of some rights under said letters patent and the belief of the parties in the validity of said patent was the principal consideration for such investment; that the said corporation shortly after its organization entered upon the business for which it was incorporated and manufactured and sold a large number of ice and refrigerating machines containing compression pumps substantially like that shown and described in said patent to said James Boyle, which machines were put into use in many places throughout the United States, both North and South, and that such manufacture and sale was continued for more than five years thereafter.

Your orator on information and belief further alleges that the said letters patent was the principal patent under which the said Boyle Ice Machine Company had or claimed any rights, and that at the time of its organization it took the name of Boyle Ice Machine Company for the reason that it was going to operate and do business on the strength of and under the patent so issued in the name of James Boyle as aforesaid, and that its name was not intended to have any special reference to said David Boyle, who figured as one of the incorporators of said company.

Your orator on information and belief further alleges that the improvement described and claimed in the said letters patent No. 175,020 was the principal part of the ice-making and refrigerating machines which said Boyle Ice Machine Company manufactured and sold as aforesaid, and that by virtue of such use of said improvements and a claim of right or title under said letters patent said company made its reputation and said improvements and patent became extensively favorably known to the public at large and to all manufacturers of ice-making and refrigerating machines as "Boyle ice machine, patented," or "Boyle refrigerating machines" or "the Boyle ammonia pump," "Boyle pattern," "Boyle gas compressor," and the like in identification of the im-
9 provements described and claimed in the aforesaid letters patent; that said Boyle Ice Machine Company did from its organization to the time of its discontinuance of the manufacture of said machines assert the validity of said patent before the public at large in divers ways and manners, and the validity thereof was very generally acquiesced in by the public and manufacturers of machines for such purposes, whereby the said letters patent became and was of great value and importance to said company in its said business and to another company succeeding it therein, as hereinafter stated.

Your orator on information and belief farther alleges that on or about the 19th day of July, 1884, Edmund Jungenfeld, Joseph Koenigsberg, and Leo Rassieur, proposing to form a corporation under the laws of the State of Illinois, filed in the office of the secretary of state of said State a certificate for the incorporation of the Consolidated Ice Machine Company; that the object for which said corporation was to be formed was to manufacture and sell ice-making and refrigerating machinery and all parts of such machinery, acquire, sell, and use patents for such machinery and li enses to operate thereunder, to manufacture and sell ice and establish and conduct cold-storage rooms and ice depots.

That thereupon the said secretary of state did issue to said Edmund Jungenfeld, Joseph Koenigsberg, and Leo Rassieur a license to open books of subscription for the capital stock of said company, and that thereafter such proceedings were had under said license and in pursuance of the laws of said State as to effect the organization of said company and the election, as directors thereof for the period of one year, of the said Jacob W. Skinkle, Edmund Jungenfeld, William B. Bushnell, and Leo Rassieur, and on the 17th day of September, 1884, said secretary of state did issue his certificate to the effect that the said The Consolidated Ice Machine Company was a legally organized corporation under the laws of the State of Illinois, all of which acts and proceedings in relation thereto will more fully and at large appear by reference to a certified copy thereof, hereunto annexed as a part of this bill and marked "Exhibit G."

Your orator on information and belief alleges that at or about the time of the organization of said The Consolidated Ice Machine Company as aforesaid one or more agreements or contracts were made and entered into by and between the said Jacob W. Skinkle, William B. Bushnell, Leo Rassieur, and one or more other parties interested in the said company as stockholders, officers, or directors thereof for the purposes of said company and in which their rights and interests respecting the patents under which said company was to operate or do business were defined, which said agreements also defined the rights of said The Consolidated Ice Machine Company in, to, or under such patents, as well as any improvements or patents owned or controlled or thereafter to be owned or controlled by said parties respectively, for a period of years therein stated, and particularly did said contracts or agreements have relation to the said patent, No. 175,020, under which the said Boyle Ice Machine Company had previously been operating as aforesaid; that, as your orator is informed and believes, the title to said patent was at that time standing in the name of said Samuel W. Adams, trustee, but your orator, however, charges on information and belief that the said William B. Bushnell then had or claimed to have some beneficial interest in said patent and exercised or claimed to have the right to exercise ownership or control thereof, and that said Bushnell was made a party to said agreements or contracts for the purpose of giving and granting unto said The Consolidated Ice Machine Company the right to the use in its said business of the improvements patented and claimed in said let-

ters patent, numbered 175,020, and that whatever rights said company ever had under said patent were derived by virtue of the said agreements or contracts or by some verbal or written understanding with the said William B. Bushnell or said Eliza H. Bushnell or the said Samuel W. Adams, one or all of them, and upon the basis thereof said company thereafter operated under said patent and asserted rights, ownership, or control thereof as hereinafter stated; that your orator has endeavored to procure a copy of such contracts or agreements or one of the originals thereof, but has been unable to do so, and the specific contents of such contracts or agreements as well as the purport of any verbal understanding between said parties are unknown to your orator, though your orator charges that the same are well known to the defendants herein, and that said defendant, Jacob W. Skinkle, was possessed of an original or copies of whatever written agreements were ever made which might in any manner affect the rights of said The Consolidated Ice Machine Company to the use of the improvements covered by said letters patent, and can produce the same here in court whenever required so to do.

Your orator on information and belief further alleges that said The Consolidated Ice Machine Company was the immediate successor of the Boyle Ice Machine Company and, having or claiming to have some right, title, or interest in, to, or under, or some control over, said letters patent, did, on the strength of such right or claim of right, shortly after its organization, enter extensively into the business of manufacturing, selling, or erecting for use by
11 the public refrigerating and ice-making machines and plants, the most essential part of which was the improvement described and claimed in the aforesaid letters patent No. 175,020, and said company during its continuance in business did assert by its published advertisements and circulars and its contracts with its customers and in many other ways that it owned or controlled the said letters patent No. 175,020, and that its list of patents covered what it claimed to be vital principles in compression machines, which principles, as asserted by said company, your orator charges to have been the improvements described and claimed in the aforesaid letters patent, and in none other.

Your orator on information and belief further alleges that said The Consolidated Ice Machine Company was for a period of years very successful in its business of manufacturing and selling ice-making and refrigerating machines and plants embodying the said patented improvement which your orator charges to have been the most important part of said machines and plants, and alleges that the same entered more extensively into use than any other patented features or improvements which said company ever owned, controlled, or under which it was possessed or claimed to be possessed of right or license; that said patented improvement entered into the construction of about four-fifths of all such machines and plants sold and erected by the said company and its predecessor, the said Boyle Ice Machine Company, which machines and plants embodying said improvement were sold in about thirty of the States and

territories of the United States and in about one hundred cities and towns therein.

Your orator further alleges that on or about the fourteenth day of April, 1888, the said Samuel W. Adams, in whose name the title to said patent had stood as trustee as aforesaid, did by an instrument in writing grant, bargain, sell, transfer, and set over to the said William B. Bushnell all his right, title, and interest, both legal and equitable, in and to said letters patent numbered 175,020, which said assignment was recorded in the United States Patent Office on or about May 5, 1888, in Liber Q 38, page 29, of Transfers of Patents, as by reference to the aforesaid "Exhibit E" will more fully and at large appear; that thereafter and on or about the twelfth of May, 1888, the said William B. Bushnell did apply to your orator for a loan of money on the security of his title in and to the said letters patent, which title your orator at that time examined into and believed to be perfect and valid, and on the strength of such examination and belief did advance to said Bushnell the sum of money wanted by him, taking as security therefore a defeasible assignment
12 of the title to said letters patent or mortgage thereon under the provisions of which, on the non-payment of said loan on the day when the same shall become due and payable, your orator shall possess and own a license thereunder, and said Bushnell shall have six months from the date of maturity of same within which to redeem his title subject to said license by the making of payment of the money so loaned to him and interest up to the date of payment, and further that if such payment be not made within the period of one year and six months from the date of said assignment the same should become absolute, and all the rights, titles, and interests therein and thereby conveyed should thereafter continue in full force and effect as though originally made without any of said conditions. It was also therein provided that at or after the expiration of one year from the date thereof proof respecting the then state of the title might be made by affidavit or acknowledgments concerning the payment or non-payment of said money and the time of payment or default, such affidavits or acknowledgments to be recorded in the United States Patent Office.

Your orator further alleges that the said William B. Bushnell did not make the payment of said sum of money on the day when the same became due and payable, nor did he thereafter at any time make payment thereof or any part thereof, and proof of such facts was made by affidavit sworn to on or about the 17th of December, 1889; that the said assignment from said Bushnell to your orator was recorded in the United States Patent Office on or about August 3, 1888, in Liber K 38, at page 266, of Transfers of Patents, and said affidavit showing the non-payment of said loan and the state of the title as vested in your orator was also recorded in said United States Patent Office on or about January 21, 1890, in Liber C 41, page 278, of Transfers of Patents, as by reference to said "Exhibit E" will more fully and at large appear.

Your orator on information and belief further alleges that on or about the 14th day of October, 1890, said The Consolidated Ice Com-

pany failed in business and made an assignment for the benefit of its creditors, and that such failure was the occasion for an investigation by your orator into the affairs of said company, and of a further investigation into the state of your orator's title in and to the aforesaid letters patent, particularly as your orator was not informed of what rights said The Consolidated Ice Company had under said patent numbered 175,020, though your orator was aware that said company had claimed and exercised rights thereunder and had given the public to understand that it owned or controlled
13 the title to said patent during a period of years. Upon making such investigation your orator became convinced that whatever right said company had under said patent expired in the year 1889, and that it had been conducting its business during the last year of its existence without any authority, right, or license from any one ever interested in said letters patent, and that it had erected and sold a number of machines embodying the said patented improvements which were manufactured, erected, and operated in violation of the rights of your orator in the premises, and immediately upon such discovery your orator took due steps to notify parties to whom such machines were furnished of its rights thereunder and of its claims against them on account of its use of the same, and your orator has ever since been diligently making its preparations for suits against said infringements, and is now commencing the prosecution of a number of such suits.

Your orator further alleges that it was delayed in the commencement of such suits for the reason that when it became necessary and advisable for your orator to further examine into the state of its title to said letters patent it ascertained, among other things, that the hereinbefore-recited agreement between the said Theresa M. Boyle and Thomas L. Rankin had been entered into prior to the issuance of said patents, and, though recorded in the United States Patent Office, did not appear among the title papers originally examined by it; and your orator also became aware of the death of said James Boyle and the subsequent proceedings in the matter of estate, and also of the fact that during the year 1885 one Louis Tuffly, claiming to act as administrator of the estate of said James Boyle, claimed some ownership or title or interest in the said letters patent in defiance of the assignment thereof by the said Theresa M. Boyle to the said William B. Bushnell, and that such assignment had been questioned by the said Theresa M. Boyle herself; that thereupon your orator, with all possible haste and at large expense, did take the necessary steps to perfect its title to said letters patent, so that it might be able to protect its investment therein and its rights thereunder as well as its business interests and privileges conferred thereby.

Your orator further alleges that on the 9th day of November, 1891, it acquired by an instrument in writing from the said Theresa M. Boyle and from James L. Boyle, Annie M. Boyle, Cora S. Boyle, and Robert J. Boyle, children and heirs-at-law of the said James L. Boyle, deceased, all of their and each of their rights, titles, and interest in and to said letters patent No. 175,020, together with all claims
14 for past infringements thereof and rights of suit or action re-

specting the same, with an exception specified in said assignment as to Hugh Hamilton, of Houston, Harris county, Texas, who, as your orator is informed and believes, had expressed a willingness to take a license under said patent or pay royalty for six small machines used by him if he knew who was properly entitled to the same, and to perfect said claim your orator assigned its right therein to the said Boyles; that the assignments from the said Boyles to your orator was recorded in the United States Patent Office December 8, 1891, in Liber D 45, page 446, of Transfers of Patents; that on said 9th day of November, 1891, the said Thomas L. Rankin did also by an instrument of writing sell, assign, transfer, and set over unto your orator all his right, title, and interest in and to said patent No. 175,020, together with all claims for the past infringement thereof and rights of suit or action respecting the same, which said assignment was also recorded in the United States Patent Office on the 8th day of December, 1891, in Liber D 45, page 447, of Transfers of Patents. The contents and terms of said last two mentioned assignments to your orator will more fully and at large appear by reference to certified copies thereof hereunto annexed as a part of this bill and marked "Exhibit H" and "Exhibit I" respectively.

That said Thomas L. Rankin also assigned and transferred to your orator all his right, title, and interest in said letters patent as the administrator of the estate of James Boyle, deceased, as by reference to a duplicate of such assignment hereunto annexed as a part of this bill and marked "Exhibit K" will more fully and at large appear.

Your orator further alleges that it is in the possession and enjoyment of all its rights and privileges under said letters patent and has not been interfered with therein except in the manner hereinbefore referred to and by the defendants in the manner hereinafter stated, and that your orator is engaged and for some time past has been preparing to enter into the manufacture and sale of ice-making and refrigerating machines and plants embodying the improvements described and *and* claimed in the aforesaid letters patent, and that by virtue of the extensive acquaintance of the general public with the value and importance of said improvements and the recognition of the validity of said patent which has heretofore been almost uniformly accorded unto it your orator's rights thereunder have been and now are of great value and importance to it in its said business.

15 Your orator, on information and belief, further alleges that the defendant Jacob W. Skinkle was the president of the said The Boyle Ice Machine Company from the time of its organization down to the time that it ceased doing business, and as such officer of said company was active in the assertion of its rights under the aforesaid letters patent and held the same out to the public by printed circulars and otherwise as the patent which covered the style of compressor manufactured by the said Boyle Ice Machine Company during the entire period in which it was engaged in said business; that the said Jacob W. Skinkle was the president and treasurer of the said The Consolidated Ice Machine Company from the date of its organization down to the time of its failure, in October,

1890, and that said Skinkle was the largest stockholder in said The Consolidated Ice Machine Company and was the managing head thereof, being active in said company's behalf to further its interests by the assertion of ownership or control or license under the said Boyle patent, and that said Skinkle was fully cognizant of all the acts and doings of the said The Consolidated Ice Machine Company during the entire period of its business career and exercised control of its published literature asserting the said patent; and your orator charges that the said Jacob W. Skinkle well knew that whatever special license or rights the said The Consolidated Ice Machine Company ever owned or possessed under the said letters patent were not ownership of the title to said patent, and that whatever rights it had thereunder were derived through the said William B. Bushnell at the time of the organization of said company in the manner hereinbefore charged.

Your orator further charges that the said Jacob W. Skinkle was well aware at or about the time of the incorporation of said The Consolidated Ice Machine Company of the filing of a certain bill of complaint in the circuit court of the United States for the eastern district of Texas, at Galveston, by one Louis Tuffly, claiming to be administrator of the estate of James Boyle, deceased, against the Anheuser-Busch Brewing Association for an alleged infringement by use by said The Anheuser-Busch Brewing Association of a machine furnished to it by said The Boyle Ice Machine Company, which said bill of complaint was filed in said court on or about the 26th day of September, 1884; and your orator further charges that the said Jacob W. Skinkle was, at or about the same time, well aware of the fact that the said Louis Tuffly claimed, as such administrator, to have some interest or title in the said letters patent; and your orator further charges that the said Jacob W. Skinkle
16 was also well aware of another certain bill of complaint filed by the said Louis Tuffly against the same defendant upon substantially the same subject-matter on or about the 9th day of June, 1885, in which said last-mentioned bill the said Louis Tuffly likewise claimed, as such administrator, to own some interest or title in said letters patent.

Your orator further alleges that the defendant Jacob W. Skinkle has very recently and now pretends that there was some defect or error in the application or proceedings relating to the issuance of said letters patent by the United States Patent Office as aforesaid, whereas your orator charges the contrary to be true; and your orator charges that even if said pretence be true, yet that the said defendants, and particularly Jacob W. Skinkle, has for a long period of years been familiar with the history of the application and proceedings relating to the procurement of the aforesaid letters patent No. 175,020, and particularly does your orator charge that the said Skinkle had full knowledge of the defenses which were interposed in behalf of the said The Anheuser-Busch Brewing Association in the said two suits brought by the said Louis Tuffly as aforesaid, and that the said Jacob W. Skinkle was, at or about the time of the preparation of the defense in the said last-mentioned suit, well

aware of all the proceedings in the Patent Office in relation to or connected with the procurement and issuance of said patent, and not only made an affidavit to be used on motion for an injuntion in the last-named suit by the said Louis Tuffly, but also knew that in said suit it was asserted in said answer that subsequent to the death of the said James Boyle, to wit, on the 18th day of December, 1875, Messrs. Alexander and Mason, patent attorneys in the city of Washington, took action in said matter, and that the said application was prosecuted to an allowance and issuance of the said patent, as herebefore stated and set forth.

Your orator further charges that the said Jacob W. Skinkle was also well aware of the petition filed July 20, 1885, in the United States Patent Office in the matter of the said patent by the said Louis Tuffly as such administrator, and in which petition it was asserted that the said patent was issued by mistake to the said James Boyle, his heirs or assigns, instead of being issued to the administrator of said estate, and in which petition it was prayed that letters patent be issued *nunc pro tunc* to the administrator of said estate, which petition of Louis Tuffly was designed and intended to cure a supposed defect in the issuance of said patent; and your orator charges that the said Skinkle, being aware of the said petition and being aware of the fact that if a new patent were to be issued as prayed for therein it would or might affect some

17 supposed rights or licenses or title of the said The Consolidated Ice Machine Company thereunder, did on or about the 31st day of August, 1885, make and swear to an affidavit in the proceedings then pending in the United States Patent Office, in which the said Skinkle asserted matters hereinbefore alleged as to the investment of capital in the said Boyle Ice Machine Company, and belief of the parties interested therein as to the Bushnell title being perfect, and belief of said parties in the validity of said patent, as well as the extensive use of the improvements therein described and claimed by the said Boyle Ice Machine Company, and period during which it was engaged in building said machine, and in said affidavit did also assert his knowledge of said suit against the Anheuser-Busch Brewing Association and his familiarity with many matters relating to or connected with the matters in controversy, and did also assert his knowledge of the appointment of said Thomas L. Rankin administrator of the estate of James Boyle, deceased, his knowledge of the appointment of Theresa Boyle as the administratrix of the estate, and his knowledge of the claims of said Louis Tuffly as administrator thereof, all of which matters and things as stated by said Skinkle in said affidavit will more fully and at large appear by reference to a certified copy thereof hereunto annexed as a part of this bill and marked "Exhibit J."

Your orator further charges that Jacob W. Skinkle was well aware at the time of the pendency of the suits of said Louis Tuffly, in Texas, of all other defenses which were interposed therein, and particularly of certain French patents—that is to say, to Jules Seguin, May 18, 1840, No. 10183, old series; certificate of addition thereto, June 11, 1840, and to Dela Beffa & West, October 18, 1872,

new series, No. 96890—which said patents it was at or about that time supposed might in some possible way have relationship to the said Boyle patent so as to restrict, limit, or otherwise affect the validity or scope thereof, but which your orator alleges has no such affect and in nowise anticipates, limits, restricts, or affects the validity or scope of the aforesaid patent to James Boyle, No. 175,020; and your orator also charges that said Skinkle had full knowledge of the fact that the questions involved in said suit were never adjudicated, but that for some reason unknown to your orator the same were withdrawn or permitted to pend without prosecution; and your orator further alleges that the said Jacob W. Skinkle and said The Consolidated Ice Machine Company, at and after the making of the said affidavit marked "Exhibit J"-as aforesaid, continued to assert said patent before the public in divers
18 ways and manners, to wit, in printed advertisements, in circulars, and by reference thereto in the contracts taken by the said The Consolidated Ice Machine Company for the machines of its manufacture under and in accordance with the improvements described and claimed in said patent No. 175,020, and so continued to assert the said patent down to the year 1890, when said The Consolidated Ice Machine Company failed in business and made an assignment for the benefit of its creditors as aforesaid.

Your orator, on information and belief, further alleges that said John Featherstone, George Featherstone, and Arthur J. Featherstone are and for a number of years past have been, to wit, ever since the year 1885, engaged in building ice machines for the said The Consolidated Ice Machine Company, the compressors for which were built in accordance with the improvement described and claimed in the said patent No. 175,020, and that many of the machines sold and erected by the said The Consolidated Ice Machine Company and running in the United States at the present time are of their manufacture, and that at the time of the failure of said The Consolidated Ice Machine Company in its business, the said defendants Featherstone were and are now creditors of said company to a large amount. Your orator charges the fact to be that the said John Featherstone, George Featherstone, and Arthur J. Featherstone are and for several years past have been perfectly famil-ar with the said letters patent No. 175,020 and with the construction of the compressor used by the said The Consolidated Ice Machine Company, which were built by said company and by said Featherstone for said company in accordance with said letters patent, and that they and each of the said defendants Featherstone have also for several past been familiar with any possible objections or defenses which might be made to the validity of said letters patent, and especially to the matters hereinbefore specified as having been fully known to the said Jacob W. Skinkle as early as the year 1885.

Your orator further charges that the said John Featherstone, George Featherstone, and Arthur J. Featherstone were also familiar with the printed advertisements and published catalogues and circulars of said The Consolidated Ice Machine Company and with the

statements therein referring to or specifying the said letters patent, and were also familiar with the fact that the Consolidated Ice Machine Company claimed to own or control certain rights under the said letters patent 175,020, under and by virtue of which said company did assert such patent before the public at large. Your orator further charges that the said John Featherstone, George
19 Featherstone, and Arthur J. Featherstone have for several years been familiar with the form of contract which said The Consolidated Ice Machine Company entered into with its customers, and in which reference was made to said letters patent No. 175,020 aforesaid. Your orator further charges that the said Clarence A. Knight was and for several years past has been the attorney for the said defendants Feathstone, and particularly was he their attorney in connection with patent matters; and your orator charges that the said Clarence A. Knight has for many years past been familiar with the said letters patent and with all matters pertaining thereto, and particularly with all defenses or possible objections which might be made in a court in respect to the same, and particularly with the defense hereinbefore specified as having been known to the said Jacob W. Skinkle as early as the year 1885. Your orator further charges that the said Clarence A. Knight for many years past has been familiar with all the published literature of said The Consolidated Ice Machine Company and with the form of contracts entered into by said company with its customers, and has known and understood for years past that said The Consolidated Ice Machine Company claimed to own or control said patent or to possess some license or rights under and by virtue thereof.

Your orator charges that the said John Featherstone, George Featherstone, and Arthur J. Featherstone were themselves among the largest creditors of said The Consolidated Ice Machine Company at the time of its failure, and for the purpose of securing control of its affairs purchased the claim of another of the largest creditors thereof, to wit, that of the Crane Brothers Manufacturing Company, for much less than the face value thereof, and have been seeking to and, as your orator believes, have purchased the claims of other creditors of said insolvent corporation for the purpose of enabling them to form a new corporation, and have been and are now acting in concert with Jacob W. Skinkle and with Leo Rassieur and Frederic Weidman, the last two named of whom were directors in said The Consolidated Ice Machine Company, but who now reside in the city of St. Louis, and would be made parties hereto but for the fact that they reside beyond the jurisdiction of this court, and, acting with others, the names and residences of whom are unknown to your orator, have recently entered into an agreement or combination and merger of interests of which the said Clarence A. Knight and Otto C. Butts have been appointed, and are acting as trustees for said Featherstone, Skinkle, and the other parties hereinbefore mentioned, as well as those who are unknown to your orator.
20 Your orator charges the fact to be that under and by virtue of the aforesaid combination or merger of interests and the agreement by which said defendants, Clarence A. Knight and Otto

C. Butz, were appointed trustees, and pursuant to which they are now acting in said capacity, the said trustees are empowered to bid in any and all of the assets of said Consolidated Ice Machine Company in their own names as trustees for the benefit of the said Featherstone, Skinkle, and other parties entering into the said agreement or combining or merging their interests with them, and, further, that in case said trustees purchase said assets, then all the said assets so purchased shall be held by said trustees for the benefit of said parties entering into said combination or merger of interests under the said trust agreement, and, further, that in case the said trustees shall deem it advisable to form a corporation under the laws of the State of Illinois to carry on said ice machine manufacturing business, which has heretofore been carried on by said The Consolidated Ice Machine Company, then the said trustees shall have power and authority to transfer all or a part of said assets so received by them as aforesaid to the corporation so to be formed for the purpose of carrying on said business.

Your orator further alleges, on information and belief, that the assets of said The Consolidated Ice Machine Company consist in part of drawings and patterns for the making of ammonia compressors, which compressors were and always have been the most essential part of said ice and refrigerating machines heretofore built by said company and by its predecessor, the Boyle Ice Machine Company, which compressors were and have been and are designed to be under and in accordance with the said letters patent 175,020; and your orator alleges in particular that the balance-sheet of said The Consolidated Ice Machine Company, taken shortly after its failure in business, showed the value of the patterns to be $17,693.80 and the value of the drawings to be $12,883.18, and your orator alleges, on information and belief, that the value of the patterns and drawings of said insolvent corporation which relate to that part of the machine described and claimed in the aforesaid letters patent No. 175,020 forms about ten per cent. of the whole value of the patterns and drawings as shown by the said balance-sheet.

Your orator further shows, on information and belief, that the drawings and patterns which relate to the compressor part of said machine are of little or no value for any other purpose than that of manufacturing machines after the style of and in strict accordance with the improvement described and claimed in your orator's
21 said letters patent, and your orator charges the fact to be that the chief purpose of authorizing the said trustees, Clarence A. Knight and Otto C. Butz, to purchase the assets of the said insolvent corporation in their own name as trustees, and to form the new corporation under the laws of the State of Illinois and to transfer all or a part of said assets so received by them, is to be for the express purpose of manufacturing and putting into use refrigerating and ice-making machines and plants embodying the said patented improvements in all its essential features and in infringement of and violation of the rights of your orator as the sole owner of the said patent. Your orator further charges that the said defendants, John

Featherstone, George Featherstone, and Arthur J. Featherstone, have by some means unknown to your orator become possessed of the original drawings and patterns for machines of the style previously manufactured by the said The Consolidated Ice Machine Company and particularly the original drawings and patterns for the said Boyle compressor part of the machine and have recently, to wit, in the month of November, commenced to advertise that since the original company have failed they have concluded to continue this business and will hereafter manufacture any kind or style of consolidated ice machine desired, meaning thereby machines of the "Boyle pattern," and your orator charges that said defendants Featherstone have commenced said manufacture and to continue the same pending the carrying out of the said trust agreement and the organization of a new corporation as provided for in the agreement by which the said Clarence A. Knight and Otto C. Butz were appointed trustees, and your orator charges that said defendants Featherstone are now or intend to manufacture machines in infringement of the said letters patent for the express purpose of establishing and holding the business until such time as they shall receive their stock in the new corporation, when, as your orator believes, they will control such new corporation and its manufacture of said machines in violation of your orator's rights under the said patent.

Your orator further charges that the said defendants Featherstone pretend that the said letters patent is a bogus patent, and have publicly given notice that they intend to bring suit against your orator on account of its assertion of ownership of the said patent and notice of infringements thereof by what said Featherstones term misrepresentation and fraud, and that said Featherstones are doing all in their power to injure your orator's general business and also its business under said patent, and to deprive your orator of
22 gains and profits which would otherwise accrue to it by building of said machines and by the enjoyment of its rights as the exclusive owner of said patent, and are working to the great detriment of your orator's business and to the damage of your orator in a large sum of money; all of which acts, doings, and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises.

In tender consideration whereof and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law and is relievable only in a court of equity where matters of this nature are properly cognizable and relievable—

To the end, therefore, that the said John Featherstone, George Featherstone, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz, the defendants herein, and their confederates, when discovered, may upon their several and respective corporal oaths, to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters aforesaid and such of the several inter-

rogatories hereinafter numbered and set forth as by notes hereunder written they are respectively required to answer—that is to say:

1. Whether it is not true that the trust agreement under which Samuel W. Adams held title to said letters patent No. 175,020 was executed on or about the 23d day of October, 1878?

2. Whether the declaration of trust made by said Samuel W. Adams or a copy thereof was not delivered to the said Jacob W. Skinkle?

3. Whether it is not true that said Jacob W. Skinkle has now the original or a copy of said declaration of trust in his possession and can produce the same in court? If yes, he is requested to produce the same on the hearing of a motion for an injunction herein.

4. If said Jacob W. Skinkle does not know where said declaration of trust or a copy thereof can be procured by him so that the same can be produced as requested by the above interrogatory, whether it is not true to his knowledge that the title to said patent No. 175,020 was vested in said Samuel W. Adams, trustee, for the use and benefit of The Boyle Ice Machine Company in its business of manufacturing and selling machines embodying the improvements thereby patented?

5. Whether it is not true that the said Boyle Ice Machine Company asserted through the said Jacob W. Skinkle, as its president, and through other officers and agents of said company, ownership in or control of or rights under said patent numbered 175,020?

6. Whether it is not true that the advertisements and circulars of said Boyle Ice Machine Company were put out with the knowledge and under the direction of said Jacob W. Skinkle?

7. Whether it is not true that at or about the time of the organization of said The Consolidated Ice Machine Company there was a disagreement between the said Skinkle and David Boyle?

8. Whether it is not true that Jacob W. Skinkle and William B. Bushnell put out over their own signatures a circular giving the history of David Boyle's connection with said Boyle Ice Machine Company?

9. Whether the matters stated in the said circular were true in fact?

10. Whether said circular was not printed and circulated over the signature of the said Skinkle and Bushnell for the benefit of themselves and others interested in the said The Consolidated Ice Machine Company?

11. Whether it is not true that said circular was made use of by officers and agents of the Consolidated Ice Machine Company under said Skinkle's direction?

12. Whether it is not true that the said Boyle Ice Machine Company or said The Consolidated Ice Machine Company or parties interested in one or both of said companies paid the expenses of defending the suits brought by Louis Tuffly against the Anheuser-Busch Brewing Association, hereinbefore referred to as having been brought in the State of Texas?

13. Whether it is not true that said Skinkle directed the manage-

ment of the defense in said suits; and, if not, what was his connection with them?

14. Whether it is not true that said Skinkle as early as 1885 and said Featherstone and Knight for some years past have been aware of the defenses set up in the answer in said suits and particularly the defenses thereto in this bill specified?

15. Whether said Skinkle was not as early as August, 1885, and said defendants Featherstone and Knight for some years past have been familiar with the Patent Office proceeding taken and had in the matter of the application of said James Boyle for said letters patent No. 175,020, and particularly with the amendments made thereto by Alexander and Mason, the solicitors thereof after the death of said James Boyle?

16. Whether said The Consolidated Ice Machine Company did not assert in its published catalogues or advertisements that
24 its line of patents covered what it claimed to be vital principles in compression machines? And, if yea, state the date and number of the patent in its alleged line of patents referred to as covering such vital principles.

17. Whether said The Consolidated Ice Machine Company did not make assertion of ownership and control of all patents under which it operated, and particularly of said patent No. 175,020?

18. Whether said The Consolidated Ice Machine Company did not make use of various terms in its published catalogues, advertisements, and contracts, such as "Boyle machine," "Boyle pattern," "Boyle ammonia compressor," and the like to designate machines built under said patent No. 175,020?

19. Whether said company did not specifically guarantee its ownership of said patent No. 175,020 in many of its contracts, and particularly in a contract made and entered into by it in the latter part of the year 1888 with George Schmitt and Louis Von Schwanaufleugel, of New York city, for the erection of one fifty-ton refrigerating machine, having a "single-acting ammonia pump covered by letters patent of the United States No. 175,020"?

20. Whether the advertisements of said The Consolidated Ice Machine Company and its printed circulars were not published and placed before the public with the knowledge of or under the direction of said defendant Skinkle?

21. Whether the ownership or control of or any rights under said patent No. 175,020 asserted and claimed by the Consolidated Ice Machine Company were not derived under and by virtue of an agreement or understanding entered into by and between said defendant Skinkle and said William B. Bushnell and others, as in this bill charged, or some agreement or understanding between said Bushnell and said company?

22. Whether said agreement was in writing and a copy thereof placed in the possession of said defendant Skinkle? If yea, he is requested to produce the same at the hearing of a motion for a preliminary injunction in this cause.

23. Whether the agreement between said defendant Skinkle, Bushnell and others, referred to in interrogatories No. 21 and No.

22, was not the only agreement under which said company derived whatever rights it possessed under said patent No. 175,020 and on the strength of which said company asserted ownership or control of said patent? If nay, what other agreements existed, either verbally or in writing, giving to said company ownership in, control of, or rights under said patent, and can they be produced at the
25 hearing of a motion for an injunction herein, or, if verbal understandings were had only, can the purport thereof be stated to the court at such hearing?

24. Whether the rights claimed by said The Consolidated Ice Machine Company under said patent No. 175,020, in whatever form they existed, did not expire by limitation in the year 1889, and at what time in said year or any other year?

25. Whether the defendants Featherstone did not commence to build machines for said The Consolidated Ice Machine Company in 1885 or 1886, and in what year and at what time of year did they commence the building of such machines for said company?

26. Whether the defendants Featherstone, one or more of them, or the manager of their business, did not know of said patent No. 175,020 at or about the time they commenced to build machines for said The Consolidated Ice Machine Company or at what time did they first learn of such patent?

27. Whether the defendants Featherstone, one or more of them, or the manager of their business, did not know at or about the time they commenced to build machines for said company that said company claimed to have some ownership in, control of, or rights under said patent No. 175,020, or at what time did they or any of them or their manager first so acquire such knowledge?

28. Whether the defendants Featherstone, one or more of them, or the manager of their business, did not have knowledge of the printed advertisements and circulars of said The Consolidated Ice Machine Company, and particularly of its large printed circular or catalogue, at or about the time they commenced to build machines for said company, or at what time did they first have knowledge of its advertiseme-ts and circulars and of the one herein referred to?

29. Whether it was not, at or about the time said defendants Featherstone commenced to build machines for said company, represented to *be* one or more of them or the manager of their business by the said defendant, Skinkle, or some officer or agent of said company, that they were to build for it machines under the Boyle patent No. 175,020, which said company owned or under which it claimed some right, or were they not given to understand it?

30. Whether the defendants Featherstone or one or more of them or the manager of their business did not know from the time they commenced to build machines for said company up to the end of the year 1889 or up to the time of the failure of said company that they were building for said company machines of the "Boyle pat-
tern," under said patent No. 175,020?
26 31. Whether the drawings or patterns of the compressors built by said defendants Featherstone for said company were not furnished to them by said company?

32. Whether since the failure of said company said defendants Featherstone have become possessed of the original drawings and patterns, or at what time did they become possessed of them and in what manner?

33. Whether the defendant Clarence A. Knight is not now and for some years past has been and for how long the attorney for said defendants Featherstone?

34. Whether the defendant Clarence A. Knight has not for some years past and for how long a time been familiar with or had some knowledge of said letters patent No. 175,020?

35. Whether the defendant Clarence A. Knight has not for some years past and how long had knowledge of the fact that said The Consolidated Ice Machine Company claimed some ownership in, control of, or rights under said letters patent No. 175,020?

36. Whether the defendant Clarence A. Knight has not known for some time past and how long that said defendants Featherstone were building machines for said The Consolidated Ice Machine Company of the "Boyle pattern" or substantially under or in accordance with said letters patent No. 175,020?

38. Whether during the month of October, 1891, all the defendants herein were not in communication, directly or indirectly, and in what manner with Leo Rassieur, of St. Louis, Mo., with a view of forming a syndicate to buy up claims of creditors of said The Consolidated Ice Machine Company, and to arrange for a continuance of the manufacture of machines of the "Boyle pattern" or such as had been previously been manufactured by said The Consolidated Ice Machine Company?

38. Whether the defendants herein did not during October, 1891, form a syndicate or come to some understanding in relation to the purchase of claims of creditors and in relation to the placing of their claims and those which they succeeded in purchasing in the name of the defendants Clarence A. Knight and Otto C. Butz, as trustees as previously alleged in this bill?

39. Whether the defendants Featherstone did not themselves purchase the claim of the Crane Brothers Manuf-cturing Company against said The Consolidated Ice Machine Company, and have they not also purchased other claims of creditors of said company and assigned the same, together with their own claims as creditors thereof, to the said defendants, Clarence A. Knight and Otto C. Butz, trustees, as aforesaid?

27 40. Whether a trust agreement has not been duly signed and executed for the purposes, and empowering the said trustees, as substantially alleged in this bill, and by whom was the same so executed?

41. Whether the said Clarence A. Knight and Otto C. Butz are not now acting as trustees of the claims of said Featherstones and other creditors, with power to organize a company under the laws of the State of Illinois, substantially as and for the purposes hereinbefore charged and alleged?

42. Whether the defendants Featherstone did not, at or about the time of the consummation of said trust agreement, insert an adver-

tisement in "Ice and Refrigeration" and in other trade papers, wherein they defied the rights of this complainant under said patent No. 175,020, and referred to the same as a bogus patent, and did threaten suit against this complainant on account of notices of infringement thereof, and did state in said advertisement that they "hereafter will manufacture to order any kind or style of consolidated ice machine desired"?

43. Whether the defendants Featherstone have not already entered upon the manufacture of consolidated ice machines of the "Boyle pattern," and have not already contracted to furnish one or more such machines in defiance of the rights of this complainant under said patent No. 175,020?

44. Whether there is not some understanding between the defendants Featherstone, Skinkle, and others that in case a new corporation is organized under and pursuant to the terms of said trust agreement said defendants Featherstone will manufacture said machines for such new corporation?

45. Whether the defendants Featherstone will not receive a large proportion of the stock of such new corporation, and whether the other defendants herein will not also receive stock thereof and have some connection therewith?

46. Whether any steps have been taken since the execution of said trust agreement toward effecting the incorporation and organization of the new corporation provided for in said trust agreement and what steps?

Your orator prays that the said defendants, John Featherstone, George Featherstone, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz, their and each of their agents, attorneys, servants, and workmen, and each and every of them may be restrained and enjoined as well preliminarily and provisionally as perpetually from in any manner making, using, and selling the improvements in gas-liquefying pumps described and claimed in said letters patent No. 175,020 or any substantial
28 and material part thereof in their business as now conducted or as the same may hereafter be conducted, either in their own names or in any other name or manner whatsoever, and in any business in which they or any of them may be parties in interest or otherwise have connection therewith in violation of your orator's rights in the premises, and that said defendants may be compelled to make a complete disclosure and discovery of the extent of their use in violation of your orator's said rights of the improvements described and claimed in said letters patent No. 175,020, and may render unto your orator a true and perfect account of all gains, profits, savings, benefits, and advantages derived therefrom, and may be decreed to pay over the same unto your orator, together with the damages sustained by your orator by reason of their aforesaid unlawful acts and doings, and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience and to your honors shall seem meet and proper.

May it please your honors to grant unto your orator the writs

of injunction issuing out of and under the seal of this honorable court, directed to the said defendants, John Featherstone, George Featherstone, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz, their and each of their agents, attorneys, servants, and workmen and each and every of them, as is heretofore in that behalf prayed.

And also the writ of subpœna commanding the said defendants and each and every of them by a certain day and under a certain penalty to be and appear in this honorable court and make answer to this your orator's bill of complaint and abide by and perform such order and decree herein as may be made against them; and your orator will ever pray, etc.

THE DE LA VERGNE REFRIGERATING MACHINE CO.,
(Signed) By JOHN C. DE LA VERGNE, *President.*
(Signed) BANNING & BANNING & PAYSON,
Solicitors for Complainant.

(Signed) EPHRAIM BANNING,
HUBERT A. BANNING,
EDMUND WETMORE, *Of Counsel.*

29 STATE OF NEW YORK, } ss:
City and County of New York, }

John C. De La Vergne, being first duly sworn, deposes and says that he is the president of The De La Vergne Refrigerating Machine Company, the complainant named in the forgoing bill of complaint, and makes this affidavit in said company's behalf; that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated to be upon information and belief, and that as to those matters he believes the same to be true.

(Signed) JOHN C. DE LA VERGNE.

Subscribed and sworn to before me this 2nd day of January, A. D. 1892.

[NOTARIAL SEAL.] LOUIS BARON,
Notary Public No. 21, City and County of New York.

(Certificate of clerk of the supreme court of New York as to Notary Public Louis Brown.)

NOTES.—The defendant Jacob W. Skinkle is required to answer the interrogatories in the foregoing bill of complaint numbered respectively 1 to 32, inclusive, 35, 37 to 41, inclusive, and 44 to 46, inclusive.

The defendants John Featherstone, George Featherstone, and Arthur J. Featherstone are each required to answer the interrogatories in the foregoing bill of complaint numbered respectively 14 and 15 and 25 to 46, inclusive.

The defendant Clarence A. Knight is required to answer the in-

terrogatories in the foregoing bill of complaint numberrd respectively 14 and 15, 33 to 41, inclusive, and 44 to 46, inclusive.

The defendant Otto C. Butz is required to answer the interrogatories in the foregoing bill of complaint numbered respectively 37 to 41, inclusive, and 44 and 46, inclusive.

30

EXHIBIT A.

STATE OF NEW YORK, *City and County of New York,* } ss:

We, John C. De La Vergne, William M. Mixer, Josiah H. Macy, Stephen F. Byrnes, and Julius J. Suckert, do by these presents, pursuant to and in conformity with the act of the legislature of the State of New York, passed on the seventeenth day of February, one thousand eight hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the several acts of the said legislature amendatory thereof, associate ourselves together and form a company under the name and style of the De La Vergne and Mixer Refrigerator Company, and the following are hereby declared to be:

The corporate name of the said company.

The objects for which the company is formed.

The amount of the capital stock of the said company.

The number of shares of which the said capital stock of the company shall consist.

The term of existence of the company.

The number of trustees and their names.

The names of those who shall manage the concerns of the said company for the first year.

The names of the town and county in which the operations of the said company are to be carried on.

1. The corporate name of the said company is hereby declared to be The De La Vergne and Mixer Refrigerating Company.

2. The objects for which the company is formed are as follows: To manufacture, sell, and put in operation machinery and apparatus for cooling beer and other substances, for making ice, and for other refrigerating purposes.

3. The capital stock of the said company shall be three hundred and fifty thousand dollars, which shall be divided into thirty-five hundred shares of one hundred dollars each.

31 4. The said company shall commence on the third day of January, in the year one thousand eight hundred and eighty-one, and shall continue in existence for the term of fifty years.

The number of trustees shall be five.

Their names are John C. De La Vergne, William M. Mixer, Josiah H. Macy, Stephen F. Byrnes, and Julius J. Suckert.

The names of those who shall manage the concerns of the said company for the first year are John C. De La Vergne, William M. Mixer, Josiah H. Macy, Stephen F. Byrnes, and Julius J. Suckert.

6. The name of the town and county in which the operations of the said company are to be carried on is the city and county of New York, where the principal office of said company shall be situated, but the machines and apparatus made by the company may and will be sold in other States.

Witness our hands and seals this twenty-seventh day of December, 1880.

[SEAL.]	JOHN C. DE LA VERGNE.
[SEAL.]	WILLIAM M. MIXER.
[SEAL.]	JOSIAH H. MACY.
[SEAL.]	STEPHEN F. BYRNES.
[SEAL.]	JULIUS J. SUCKERT.

STATE OF NEW YORK, }
City and County of New York, } ss:

On the twenty-seventh day of December, in the year one thousand eight hundred and eighty, before me personally came John C. De La Vergne, William M. Mixer, Josiah H. Macy, Stephen F. Byrnes, and Julius J. Suckert, known and known to me to be the individuals described in and who executed the foregoing instrument, and severally acknowledged that they had executed the same.

E. K. VAN BEUREN,
Notary Public, Kings County.

Certificate filed, New York county.

32 STATE OF NEW YORK, }
City and County of New York, } ss:

I, William A. Butler, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that E. K. Van Beuren has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the annexed deposition duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 27th day of December, 1880.

[SEAL.] WM. A. BUTLER, *Clerk.*

STATE OF NEW YORK, }
City and County of New York, } ss:

I, William J. McKenna, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original certificate of incorporation of The De La Vergne Company and Mixer Refrigerating Company, on file in my office, and that the same is a correct transcript therefrom and of the whole of such original.

(Endorsed:) Filed December 28, 1880.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 15th day of December, 1891.

[SEAL.] WM. J. McKENNA, *Clerk.*

33 STATE OF NEW YORK, } ss.:
Office of the Secretary of State, }

I have compared the preceding with the original certificate of incorporation of The De La Vergne and Mixer Refrigerating Company, with acknowledgment thereto annexed, filed and recorded in this office on the 29th day of December, 1880, and do hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this 10th day of December, one thousand eight hundred and ninety-one.

[SEAL.] FRANK RICE,
Secretary of State.

(Endorsed:) State of New York, office of secretary of state. Filed and recorded December 29, 1880. Anson S. Wood, deputy secretary of state.

EXHIBIT B.

Supreme Court, City and County of New York.

In the Matter of THE DE LA VERGNE AND MIXER REFRIGERATING COMPANY.

At a special term, New York city, June 25, 1883.

Present: Honorable A. R. Lawrence, justice.

On reading and filing the petition of The De La Vergne and Mixer Refrigerating Company, John C. De La Vergne, president, for change of name of said company to The De La Vergne Refrigerating Machine Company, and proof of the publication of the notice of application for an order changing said name as aforesaid, as required by law—

34 Now, on motion of D. G. Wild, attorney for said company, no one opposing—

It is ordered that the name of The De La Vergne and Mixer Refrigerating Company be, and the same is hereby, changed to The De La Vergne Refrigerating Machine Company.

[SEAL.] PATRICK KEENAN, *Clerk.*

(A copy.)

(Endorsed:) State of New York, office of secretary of state. Filed and recorded December 5, 1883. Anson S. Wood, deputy secretary of state.

STATE OF NEW YORK, } ss:
Office of the Secretary of State, }

I have compared the preceding with the copy of order changing name of The De La Vergne and Mixer Refrigerating Company to The De La Vergne Refrigerating Machine Company, filed and recorded in this office on the 5th day of December, 1883, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

[SEAL.] Witness my hand and the seal of office of the secretary of state, at the city of Albany, this tenth day of December, one thousand eight hundred and ninety-one.

FRANK RICE,
Secretary of State.

EXHIBIT C.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the
35 records of this office of an instrument of writing executed by T. L. Rankin and Theresa Boyle December 2, 1875, and recorded in Liber S 35, page 319.

Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

[SEAL.] In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this sixteenth day of December, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

W. E. SIMONDS,
Commissioner.

HOUSTON, TEXAS, *December* 2, 1875.

Liber S 35, page 319. Article of agreement between T. L. Rankin and Mrs. James Boyle.—T. L. Rankin, of the first part, agrees to complete the ice machine commenced by himself and James Boyle, and to provide for Mrs. Boyle while said machine is under construction until next spring, say May first, and also to press the application for patents on the part of said machine claimed by James Boyle, and in case said machine is a success and said patents are obtained, is to use his best efforts to introduce the same, and to divide with Mrs. Boyle the profits of said business until she shall have received five thousand dollars for her share; after which, Mrs. James Boyle agrees to release any further interest in said patents to be obtained, and the machines then in use, and from this date agrees that the said T. L. Rankin shall operate and control any interest James Boyle had pertaining to ice

machines, together with his interest in the Arctic Ice Company. Stock to vote, proxy of same.

T. L. RANKIN,
THERESA BOYLE.

Witness:
W. T. SCOTT.

Recorded March 17, 1887. E. B. C., A. M. P.

36 EXHIBIT D.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted James Boyle March 21, 1876, number 175,020, for improvement in gas liquefying pumps.

In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this tenth day of December, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

[SEAL.]

W. E. SIMONDS,
Commissioner.

No. 175,020.

The United States of America to all — whom these presence shall come:

Whereas James Boyle, of Houston, Texas, has presented to the Commissioner of Patents a petition praying for a grant of letters patent for an alleged new and useful improvement in gas liquefying pumps, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such case made and provided;

And whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the laws:

Now, therefore, these letters patent are to grant unto the said James Boyle, his heirs or assigns, for the term of seventeen years from the twenty-first day of March, one thousand eight hun-
37 dred and seventy-six, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of
[SEAL.] Washington, this twenty-first day of March, in the year of our Lord one thousand eight hundred and seventy-six, and

of the Independence of the United States of America the one hundredth.

CHARLES T. GORHAM,
Acting Secretary of Interior.

Countersigned:
R. H. DUELL,
Commissioner of Patents.

EXHIBIT E.

DEPARTMENT OF THE INTERIOR.
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed are true copies of all instruments of writing found of record up to and including October 14, 1891, under or relating to letters patent granted James Boyle March 21, 1876, number 175,020, for improvement in gas liquefying pumps, recorded in liber and page as designated on the margin of each copy. Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this [SEAL.] twenty-seventh day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

W. E. SIMONDS,
Commissioner.

38 Liber J 22, page 226.

HOUSTON, TEXAS, *January* 2, 1878.

Whereas James Boyle, of the city of Houston, county of Harris and State of Texas, did obtain letters patent in the United States for certain improvements in gas pumps, which letters patent bear date March 21, 1876, and No. 175,020; and whereas the said James Boyle has since deceased; and whereas I, Theresa Boyle, have been duly and legally appointed administratrix of the estate of the said James Boyle, deceased:

Now, this indenture witnesseth that for and in consideration of the sum of five hundred dollars to me in hand paid by William B. Bushnell, of the city of Quincy, county of Adams and State of Illinois, the receipts whereof is hereby acknowledged, I have assigned, sold, and set over, and do hereby assign, sell and set over, unto the said William B. Bushnell all the right, title, and interest which I have for myself and as the administratrix of the estate of said James Boyle, deceased, in said invention as secured by said letters patent issued by the United States to the said James Boyle, now deceased.

The same to be held and enjoyed by the said William B. Bushnell for his own use and behoof and for the use and behoof of his legal representatives to the full end of the term for which said letters

patent are granted as fully and entirely as the same would have been held and enjoyed by me had this assignment not been made.

And I hereby declare that I have not conveyed to any other party the rights and interests herein transferred to the said William B. Bushnell.

In testimony whereof I hereunto set my hand this second day of January, A. D. 1878.

THERESA BOYLE,
Administratrix of the Estate of James Boyle, Deceased.

Witness:
S. MARTIN.

Recorded January 15, 1878. J. F. F., J. H. S.

(Endorsed:) 21693. D., '91.

39 Liber R 23, page 107.

I, William B. Bushnell, of the city of Chicago, county of Cook and State of Illinois, in consideration of one dollar to me in hand paid by Eliza H. Bushnell, of the city of Quincy, county of Adams and State of Illinois, do hereby grant and convey unto the said Eliza H. Bushnell all my right, title, and interest in and to letters patent of the United States as follows, to wit:

Letters patent No. 175,020, for improvement in gas pumps, dated March 21, 1876, granted James Boyle, of Houston, Texas; the same to be held and enjoyed by the said Eliza H. Bushnell, her heirs and assigns, to the full end of the term for which said letters patent are granted and for the term of any extension thereof, and to the full end of the term or terms of any and all letters patent granted upon said improvements or any thereof, and for the term or terms of any extension or extensions of any letters patent granted on said improvement or any thereof as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand and seal this 21st day of October, A. D. 1878.
[SEAL.] WILLIAM B. BUSHNELL.

Recorded December 3, 1878.

Witnesses:
JNO. H. BELL.
A. G. McGILL.

(Endorsed:) 21693. D., '91.

Liber R 23, page 107.

Be it known that I, Roland Cox, of the city of Plainfield, in the county of Union and State of New Jersey, administrator of the estate of Harry Cox, deceased, in consideration of the sum of five dollars to me in hand paid, the receipt of which is hereby acknowl-

edged, have assigned, sold, and set over and do hereby assign, sell, and set over unto Eliza H. Bushnell, of the city of Quincy, in the county of Adams and State of Illinois, all the right, title, and interest in and to the letters patent of the United States for improve-
40 ments in gas pumps granted to James Boyle on the 21st day of March, 1876, and numbered 175,020, vested in said Harry Cox, deceased, at the time of his death.

In testimony whereof I have hereunto set my hand this 2d day of December, 1878.

ROWLAND COX,
Administrator of the Estate of Harry Cox, Deceased.

Signed in presence of—
CHAS. C. GILL.

A. M. P. E. D. A.
Recorded December 3, 1878.

Liber K 23, page 354.

Know all men by these presents that we, David Boyle, of the city of Chicago, Cook county, Illinois, and Eliza H. Bushnell, of the city of Quincy, Adams county, Illinois, parties of the first part, in consideration of the sum of one thousand dollars ($1,000) to us paid by Samuel W. Adams, trustee, of the said city of Chicago, Cook county, Illinois, party of the second part, the receipt whereof is hereby acknowledged, and for other good and valuable considerations have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part in trust according to the terms and conditions of a certain declaration of trust bearing even date herewith, executed by said party of the second part, all our right, title, and interest in and to the following letters patent issued by the United States of America, to wit:

Letters patent No. 128,448, for improvement in ice machines, dated June 25, 1872, granted David Boyle, then of San Francisco, California.

Letters patent No. 163,142, for improvement in ice machines, dated May 11, 1875, granted David Boyle, then of Washington, District of Columbia.

Letters patent No. 163,143, for improvement of ice machines, dated May 11, 1875, granted David Boyle, then of Washington, District of Columbia.

And letters patent No. 163,144, for improvement of ice machines, dated May 11, 1875, granted David Boyle, then of Quincy, Illinois.

41 Also letters patent No. 175,020 for certain improvements in gas pumps, dated March 21, 1876, granted James Boyle, of the city of Houston, in the State of Texas.

Together with all improvements or additions thereto, and also reissues and extensions of said letters patent or any of them.

In testimony whereof we have hereunto set our hands and seals this twenty-third day of October, A. D. 1878.

[SEAL.] DAVID BOYLE.
[SEAL.] ELIZA H. BUSHNELL.

In presence of—
ROBT M. SMITH,
E. I. PARKER,
Witness- to the signature of Eliza H. Bushnell.

Witness to the signature of David Boyle:
R. L. TATHAM.

Recorded January 13, 1879. J. F. F., M. H.

(Endorsed:) 21693. D., '91.

Liber X 23,
page 180.

In consideration of the sum of five dollars to me in hand paid, the receipt whereof is hereby acknowledged, I have sold and assigned and do hereby grant unto John E. Roller, of the city of Waco, county of McLennan and State of Texas, the exclusive right to use the devices described in certain letters patent of the United States, as follows:

No. 163,142, dated May 11, 1875; No. 163,143, dated May 11, 1875; No. 163,144, dated May 11, 1875, all granted to David Boyle for improvements in ice-machines, and No. 175,020, dated March 21, 1876, granted to James Boyle for improvements in gas pumps, in the said city of Waco and in no other place or places, the right herein granted being the right to use the devices described in said letters patent in the said city of Waco and in no other place or places.

The said right to be held and enjoyed by the said John C. Roller to the full end of the term for which said letters patent are granted as fully and entirely as the said right could have been held and enjoyed by me had this assignment and sale never been made.

42 In testimony whereof I have hereunto set my hand this 13th day of February, A. D. 1879.

[SEAL.] S. W. ADAMS, *Trustee.*

Recorded February 28, 1879. J. F. F., J. H. S.

(Endorsed:) 21693 D. '91.

Liber Q 38,
page 29.

Know all men by these presence that I, Samuel W. Adams, trustee, of the city of Chicago, county of Cook and State of Illinois, for and in consideration of one dollar to me in hand paid by William B. Bushnell, of the city of New York, State of New York, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell,

transfer, and set over to said William B. Bushnell all my right, title, and interest, both legal and equitable, in and to the letters patent of the United States, numbered 175,020, for certain improvements in gas pumps, dated March 21, 1876, granted James Boyle, of the city of Houston, in the State of Texas; to have and to hold the same unto the said William B. Bushnell, his heirs, executors, administrators, and assigns, to and for their own proper use and behoof forever.

In witness whereof I have hereunto set my hand and seal this 14th day of April, A. D. 1888.

[SEAL.] SAMUEL W. ADAMS, *Trustee.*

Witness: W. B. BUSHNELL.

Recorded May 5, 1888. J. F. F., M. H.

(Endorsed: 21693. C., '91.

43 Liber K 38, page 266.

Whereas William B. Bushnell, of the city of New York, county and State of New York, is the owner of letters patent of the United States No. 175,020, granted to James Boyle March 21, 1876, for gas-liquefying pumps, and is the inventor and owner of an improvement in noiseless valves, for which he, the said Bushnell, made application for letters patent of the United States on October 22, 1887, serial No. 253,055;

And whereas the De La Vergne Refrigerating Machine Company, a corporation organized under the laws of the State of New York, having its principal place of business in the city of New York, has advanced to the said William B. Bushnell the sum of fifteen hundred dollars, payable in one year from the date hereof, with interest at the rate of six per cent., and to secure the payment thereof said Bushnell has agreed to assign to said company said patent No. 175,020 for gas-liquefying pumps and any letters patent of the United States which may be used for the improvement in noiseless valves shown or set forth in said application, such assignment, however, to be conditional, as hereinafter set forth:

Now, therefore, in consideration of the said sum of fifteen hundred dollars in hand paid, the receipt whereof is hereby acknowledged, the said William B. Bushnell hereby sells, assigns, transfers, and sets over unto the said The De La Vergne Refrigerating Machine Company the entire right, title, and interest in and to the improvement in gas-liquefying pumps as secured by the said letters patent No. 175,020, granted as aforesaid to the said James Boyle March 21, 1876; also the *the* entire right, title, and interest in and to the improvement in noiseless valves, as shown and set forth in the said application filed by the said William B. Bushnell on the 22d day of October, 1887, No. 253,055, and in any letters patent of the United States which may be granted and issued therefor, the same to be held and enjoyed by the said The De La Vergne Refrigerating Machine Company for its own use and behoof and for the use and be-

hoof of its successors in business and assigns for and unto the full end of the term for which said patent is or may be granted and for which any patent of the United States may be granted for the improvement shown and set forth in said application.

Subject, nevertheless, and these presents are upon the express condition that if the said William B. Bushnell, his heirs, executors, administrators, or assigns, shall well and truly pay or cause to be paid to the said The De La Vergne Refrigerating Company, its successors, successors in business, or assigns, the sum of fifteen hundred dollars, with six per cent. interest thereon, promptly at the end of the year from the date hereof, then these presents shall be null and " void and of no force or effect whatever, and all rights, titles, and interests herein and hereby conveyed shall revert to the said William B. Bushnell as fully and entirely as if this assignment had not been made, and all rights, powers, and privileges thereunder shall cease and determine at and from the date of such payment, anything herein contained to the contrary notwithstanding. In case said payment shall not be made on the day when the same shall become due and payable, then and in that event it is understood, and these presents are upon the express conditions, that the said The De La Vergne Refrigerating Machine Company shall have and possess for its own use and for the use of its customers, its successors, successors in business, or assigns, and without further or other authority than that herein contained, the full right and license to manufacture, sell, and use the improvements herein mentioned and each and every one of them for such length of time as said improvements or any of them may be covered by any letters patent of the United States without payment of royalty, molestation, or hinderance, and in such event said William B. Bushnell shall have six months from said date of maturity within which to redeem his title to said patents, subject, however, to such license by making payment of said sum and interest up to the date of payment; but if such payment be not made within the period of one year and six months from the date thereof, then this assignment shall become absolute and all the rights, titles, and interests herein and hereby conveyed shall thereafter continue in full force and effect as though originally made without any of said conditions.

These presents are also upon the express condition that at or after the expiration of one year from the date hereof proof respecting the then state of title to the herein-named improvements or inventions and patents issued or to be issued therefor may be made by affidavits or acknowledgements concerning the payment or non-payment of said sum of money and the time of payment or default, such affidavits or acknowledgements being duly recorded in the Patent Office of the United States.

In witness whereof the said William B. Bushnell has hereunto set his hand and seal this twelfth day of May, 1888.

[SEAL.] WILLIAM B. BUSHNELL.

Recorded August 3, 1888. J. F. F., J. H. S.

(Endorsed:) 21693. D., '91.

15 Liber C, page 278.

STATE OF NEW YORK, *City and County of New York,* } ss.:

John C. De La Vergne, being duly sworn, deposes and says that he is the president of the De La Vergne Refrigerating Machine Company, a corporation organized under the laws of the State of New York, having its principal place of business in the city of New York, and makes this affidavit in said company's behalf.

That on or about the 12th day of May, 1888, the said company paid to William B. Bushnell the sum of fifteen hundred dollars ($1,500), in consideration of which said Bushnell, on said 12th day of May, 1888, executed an assignment to said company of the entire right, title, and interest in an improvement in gas-liquefying pumps as secured by letters patent of the United States, No. 175,020, granted to James Boyle March 21, 1876, and also of the entire right, title, and interest in and to an improvement in noiseless valves, as shown and set forth in an application filed by the said William B. Bushnell on the 22d day of October, 1887, No. 253,055, and in any letters patent of the United States which might be granted and issued therefor.

That the said assignment of said patent and of said application was recorded in the Patent Office of the United States on August 3, 1888, in Liber C 38, page 266, of Transfers of Patents; that said assignment contained a provision that if said William B. Bushnell, his heirs, executors, administrators, or assigns, should pay or cause to be paid to the said The De La Vergne Refrigerating Machine Company, its successors, successors in business, or assigns, the said sum of fifteen hundred dollars ($1,500), with six per cent. interest thereon, promptly at the end of one year from the date thereof, then the said assignment should be null and void and of no force or effect whatever, and all rights, titles, and interest therein and thereby conveyed should revert to the said William B. Bushnell as fully and entirely as if said assignment had not been made; and a further provision that in case the payment should not be made when the same should become due and payable, then and in that event it was understood and the said assignments were upon the express conditions that the said The De La Vergne Refrigerating Machine Company should have and possess for the use of its customers, successors, successors in business, and assigns, and without further authority than therein contained, the full right and license to manufacture, sell, and use the improvements therein mentioned

46 and each and every of them for such length of time as said improvements or any of them might be covered by any letters patent of the United States, without payment of royalty, molestation, or hinderance, and in such event said William B. Bushnell should have six months from said date of maturity within which to redeem his title to said patents, subject, however, to such licenses by making payment of said sum and interest up to the date of payment, but if such payments be not made within the period of one year and

six months from the date of said assignment, then the same should become absolute and all the rights, titles, and interests therein and thereby conveyed should thereafter continue in full force and effect as though originally made without any of said conditions.

The said assignment was also upon the express condition that at or after the expiration of one year from the date thereof proof respecting the then state of title of the therein-named improvements or inventions and patents issued or to be issued therefor might be made by affidavits or acknowledgments concerning the payment or non-payment of said sum of money and the time of payment or default, such affidavits or acknowledgments being duly recorded in the Patent Office of the United States.

Deponent further says that the said William B. Bushnell did not make the payment of said sum of money on the day when the same became due and payable promptly at the end of one year from the date of said assignment, to wit, one year from the 12th day of May, 1888, nor did he thereafter within the said six months make payment of the said sum of money or any part thereof, nor did he at the end of six months from the date of maturity of said sum of money redeem his title to said patents, subject to the licenses which vested in said company when default was made at the date of maturity and thereafter, and that he, the said Bushnell, has not up to the present time made payment of said sum or any part thereof or interest thereon, and is still in default as to payment of the whole of said sum of money and of all the interest which has accrued thereon, and that such payment was not made within the period of one year and six months from the date of said assignment, and said assignment has become absolute, and all the rights, titles, and interests therein and thereby conveyed are hereafter to continue in full force and effect as though originally made without any of the said conditions, as by the terms thereof and the proof of default in making payment as will now appear.

Deponent further says that he makes this affidavit to be recorded in the Patent Office of the United States, as provided for in the said assignment from said William B. Bushnell, and requests that the same be so recorded in behalf of the said company.

JOHN C. DE LA VERGNE.

47 Subscribed and sworn to before me this 17th day of December, 1889.

[SEAL.] LOUIS BARON,
Notary Public No. 133, City and County of New York.

Recorded January 21, 1890. E. D. A., A. M. P.

(Endorsed:) 21693. D., '91.

EXHIBIT F.

(Copy from original.)

STATE OF ILLINOIS, DEPARTMENT OF STATE.

George H. Harlow, secretary of state.

To all — whom these presents shall come, Greeting:

Whereas a statement duly signed and acknowledged has been filed in the office of the secretary of state on the 5th day of December, A. D. 1878, for the organization of the Boyle Ice Machine Company, under and in accordance with the provisions of "An act concerning corporations," approved April 18, 1872, in force July 1, 1872, a copy of which is hereunto attached;

And whereas a license having been issued to Jacob W. Skinkle, David Boyle, and Robert L. Tatham, as commissioners, to open books of subscription to the capital stock of said company;

And whereas the said commissioners have, on the 19th day of December, A. D. 1878, filed in the office of the secretary of state a report of their proceedings under the said license, a copy of which report is hereunto attached:

Now, therefore, I, George H. Harlow, secretary of state of the State of Illinois, by virtue of the powers vested in me by law, do hereby certify that the said Boyle Ice Machine Company is a legally organized corporation under the laws of this State.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this [SEAL.] 19th day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

GEORGE H. HARLOW,
Secretary of State.

48 STATE OF ILLINOIS, } ss:
County of Cook, }

George H. Harlow, secretary of state:

We, the undersigned, Jacob W. Skinkle, David Boyle, and Robert L. Tatham, residents of the city of Chicago, county of Cook, and State of Illinois, propose to form a corporation under an act of the General Assembly of the State of Illinois entitled "An act concerning corporations," approved April 18, 1872, and all acts amendatory thereof, and that for the purposes of such organization we hereby state as follows, to wit:

1. The name of such corporation is the Boyle Ice Machine Company.

2. The object for which it is formed is the manufacture, operation, and sale of ice machines and refrigerating apparatus and the manufacture and sale of ice.

3. The capital stock shall be the sum of twenty-five thousand dollars.

4. The amount of each share is one hundred dollars.
5. The number of shares two hundred and fifty.
6. The location of the principal office is in Chicago, in the county of Cook and State of Illinois.
7. The duration of the corporation shall be twenty-five years.

JACOB W. SKINKLE.
DAVID BOYLE.
ROBERT L. TATHAM.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, William H. Warrington, a notary public in and for the county and State aforesaid, do hereby certify that on this fourth day in December, A. D. 1878, personally appeared before me Jacob W. Skinkle, David Boyle, and Robert L. Tatham, to me personally known to be the same persons who executed the fore-
49 going statement, and severally acknowledged that they had executed the same for purposes therein set forth.

In witness whereof I have hereunto set my hand and seal the day and year above written.

[SEAL.] WM. H. WARRINGTON,
Notary Public.

Filed December 5, 1878.

GEORGE H. HARLOW,
Secretary of State.

To Honorable Geo. H. Harlow, secretary of state of the State of Illinois:

The commissioners duly authorized to open books of subscription to the capital stock of the Boyle Ice Machine Company pursuant to license heretofore issued, bearing date the fifth day of December, A. D. 1878, do hereby report that they opened books of subscription to the capital stock of said company, and that the said stock was fully subscribed; that the following is a true copy of such subscription, viz: We, the undersigned, hereby severally subscribe for the number of shares set opposite our respective names to the capital stock of the Boyle Ice Machine Company, and we severally agree to pay the said company, for each share, the sum of one hundred dollars.

Names.	Shares.	Amount.
Jacob W. Skinkle	247	$24,700
David Boyle	1	100
Robert L. Tatham	1	100
William B. Bushnell	1	100

That on the eighteenth day of December, A. D. 1878, at number 10 North Jefferson street, in Chicago, Illinois, at the hour of 2 o'clock p. m., they convened a meeting of the subscribers aforesaid pursuant to notice required by law, which said notice was deposited in the post office, properly addressed to each subscriber, ten days

before the time fixed therein, a copy of which said notice is as follows, to wit:

50 To (name of subscriber) —— ——:

You are hereby notified that the capital stock of the Boyle Ice Machine Company has been fully subscribed, and that a meeting of the subscribers of such stock will be held at number ten (10) North Jefferson street, in the city of Chicago, Cook county, Illinois, on the eighteenth day of December, A. D. 1878, at two (2) o'clock p. m., for the purpose of electing a board of directors for said company and for the transaction of such other business as may be deemed necessary.

(Signed) JACOB W. SKINKLE,
DAVID BOYLE,
ROBERT L. TATHAM,
Commissioners.

Dated December 7, A. D. 1878.

That said subscribers met at the time and place in said notice specified and proceeded to elect directors, and that the following persons were duly elected for the term of one year, viz. Jacob W. Skinkle, David Boyle, William B. Bushnell.

JACOB W. SKINKLE,
DAVID BOYLE,
ROBERT L. TATHAM,
Commissioners.

STATE OF ILLINOIS, } ss:
County of Cook, }

On this eighteenth day of December, A. D. 1878, personally appeared before me, a notary public in and for said county, in said State, Jacob W. Skinkle, David Boyle, and Robert L. Tatham, and made oath that the foregoing report by them subscribed is true in substance and in fact.

[SEAL.] WM. H. WARRINGTON,
Notary Public.

Filed December 19, 1878.

GEO. H. HARLOW,
Secretary of State.

205,403. Recorded December 21, 1878, at 1 p. m.
JAS. W. BROCKWAY, *Recorder.*

51 STATE OF ILLINOIS, } ss:
County of Cook, }

I, John Stephens, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed and foregoing is a true and correct copy of the record of a certain instrument filed in my office the twenty-third day of December, A. D. 1878, as document No. 205,403, and recorded in Book 4 of Corporations, at page 449.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this eleventh day of December, A. D. 1891.

JOHN STEPHENS, *Recorder.*

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF SECRETARY.

I, Isaac N. Pearson, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of articles of incorporation of the Boyle Ice Machine Company, the original of which is now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this ninth day of December, A. D. 1891.

[SEAL.]

I. N. PEARSON,
Secretary of State.

52 The recorder's office is authorized by law and is prepared to furnish "abstracts of title," commencing since the great fire of October, 1871, and running to date, to any and all real estate in Cook county.

That the furnishing of these abridged compilations of the evidence of ownership properly belongs to this office, where the records upon which they are based are officially made up and preserved, is now generally conceded.

This office is also able to furnish, with daily increasing facilities, abstracts antedating the time of the great fire to a large portion of city and county real estate.

There have been placed of record and come into possession of this office, since 1872, by the authority of the county board, for the general availment and benefit of property-owners, over ten thousand original antefire abstracts.

A large number of these are letter-press copies, which are justly preferred to any that can be made up from antefire indices. All of these abstracts, antedating the great fire, begin with the government, the canal or school trustees, or with an assumption of good title in some one, so that they are always acceptable in business transactions. They run in most cases to a date since the great fire of 1871.

The early portions of all of these abstracts cover, for a long period of years, large tracts, giving always the early chain and history of the title to entire additions and subdivisions, embracing ten, twenty, and hundreds of acres of land now in the best parts of the city. Of course, in all instances where these abstracts were brought down (before recording them) to a date since the fire the connection with the present records is complete and they can be continued at any time to date at the recorder's office.

In all cases where these abstracts (starting with large tracts of land or numerous lots) do not reach to a day since the great fire or where parts of this property, owned in smaller tracts and separate lots at this time, are not represented in the abstract down to the date

of its last examination, the abstracts may be made available as far as this latter property is represented, and thence it may be continued from the antefire indices to any day desired.

Recorder Authorized to Make Abstracts of Title.

An act to authorize recorders of deeds in counties where recorders of deeds are elected to keep abstract books and make abstracts of title and fixing the fees and compensation therefor.

SECTION 1. Be it enacted by the People of the State of Illinois represented in the General Assembly. That in all counties where a recorder of deeds is elected, in which said recorder of deeds has heretofore been, or shall hereafter be, required by the county board to keep abstract books, such recorder shall, and he is hereby authorized to keep judgment dockets and indexes thereto, tax-sale books with indexes thereto, and such other books as are usual or
53 necessary to be kept for the purpose of making complete abstracts of title to real estate. Provided, that nothing in this act shall be construed to empower the recorder to prevent the public from examining and taking memoranda from all records and instruments filed for record, indexes and other books in his official custody.

Every recorder of deeds keeping such books is hereby authorized and it shall be his duty to make and certify under the seal of his office, for all persons desiring the same, abstracts of title to real estate in his county, and to charge therefor in counties of the third class, not to exceed the following fees:

For each certificate certifying to the condition of the title as shown by such abstract, judgment and tax books the sum of three dollars ($3.00) said sum of three dollars ($3.00) to include the showing of one instrument of conveyance, incumbrance or release thereof, judgment or take sale.

For each additional instrument of conveyance, incumbrance or release thereof, the sum of one dollar ($1.00).

For each additional judgment or tax sale, the sum of seventy-five (75) cents.

For chancery and probate court proceedings necessary to be shown one dollar ($1.00) per page. Which fees shall be accounted for by such recorder in like manner with the fees received by him for recording. And every such recorder shall, for his services in keeping such books and making such abstracts of title in counties of the third class receive a salary of one thousand dollars per annum, to be paid out of the fees of his office actually collected, which compensation shall be in addition to the salary allowed him for his duties as recorder.

Every such recorder shall, before making and certifying any such abstracts of title, give a bond with sufficient security to be approved by the judge of the county court, payable to the people of the State of Illinois, in the penal sum of twenty thousand dollars ($20,000) conditioned to secure the accuracy and correctness of any

and all such abstracts of title, and to indemnify any and all persons purchasing such abstracts from such recorder, for all actual losses or damages which they may sustain by reason of any errors, mistakes or omissions in any such abstracts of title, which bond shall be filed in the office of the secretary of state, and a copy thereof entered upon the records of the county court.

Approved June 16, 1887.

Further explanation or information may be obtained by application at the recorder's office, Chicago, Ill.

P. S.—All orders by mail or letters of inquiry promptly attended to.

54 EXHIBIT G.

STATE OF ILLINOIS, DEPARTMENT OF STATE.

Henry D. Dement, secretary of state.

To all to whom these presents shall come, Greeting:

Whereas a statement duly signed and acknowledged has been filed in the office of the secretary of state on the 19th day of July, A. D. 1884, for the organization of the Consolidated Ice Machine Company under and in accordance with the provisions of "an act concerning corporations," approved April 18, 1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which statement is hereunto attached;

And whereas a license having been issued to Edmund Jungenfeld, Joseph Koeningsberg, and Leo Rassieuer, as commissioners, to open books of subscription to the capital stock of said company;

And whereas the said commissioners have on the twenty-seventh day of September, A. D. 1884, filed in the office of the secretary of state a report of their proceedings under the said license, a copy of which report is hereunto attached:

Now, therefore, I, Henry D. Dement, secretary of state of the State of Illinois, by virtue of the powers vested in me by law, do hereby certify that the said The Consolidated Ice Machine Company is a legally organized corporation under the laws of this State.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this 27th day of September, in the year of our Lord one thousand eight hundred and eighty-four and of the Independence of the United States the one hundred and ninth.

[SEAL.]

HENRY D. DEMENT,
Secretary of State.

55 STATE OF ILLINOIS, }
Cook County, } *ss:*

To Henry D. Dement, secretary of state:

We, the undersigned, Edmund Jungenfeld, Joseph Koeningsberg, and Leo. Rassieur, propose to form a corporation under an act of

the General Assembly of the State of Illinois' entitled "An act concerning corporations," approved April 18, 1872, and all acts amendatory thereof, and for the purpose of such organization we hereby state as follows, to wit:

1. The name of such corporation is the Consolidated Ice Machine Company.

2. The object for which it is formed is to manufacture and sell ice-making and refrigerating machinery and all parts of such machinery, to acquire, sell, and use patents for such machinery and licenses to operate thereunder, to manufacture and sell ice, and to establish and conduct cold storage rooms and ice depots.

3. The capital stock shall be two hundred thousand dollars.

4. The amount of each share is one hundred dollars.

5. The number of shares shall be two thousand.

9. The location of the principal office is in Chicago, in the county of Cook, State of Illinois.

7. The duration of the corporation shall be twenty-five years.

EDMUND JUNGENFELD.
JOSEPH KOENINGSBERG.
LEO. RASSIEUR.

56 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Benjamin A. Suppan, a notary public in and for the city and State aforesaid, do hereby certify that on the eighteenth day of July, A. D. 1884, personally appeared before me Edmund Jungenfeld, Joseph Koeningsberg, and Leo Rassieur, to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they executed the same for the purposes therein set forth.

In witness whereof I have hereunto set my hand and seal the day and year above written.

[SEAL.]

BENJ. A. SUPPAN,
Notary Public.

My term expires April 17, 1887.

Filed July 19, 1884.

HENRY D. DEMENT,
Secretary of State.

To Henry D. Dement, secretary of state of State of Illinois:

The commissioners duly authorized to open books of subscription to the capital stock of the Consolidated Ice Machine Company, pursuant to license heretofore issued, bearing date of the nineteenth day of July, A. D. 1884, do hereby report that they opened books of subscription to the capital stock of said company, and that the said stock was fully subscribed; that the following is a true copy of such subscription, viz:

We, the undersigned, hereby severally subscribe for the number of shares set opposite our respective names to the capital stock of the Consolidated Ice Machine Company, of Chicago, Illinois, and

we severally agree to pay the said company for each share the sum of one hundred dollars in such installments as may be called for by the board of directors:

57

Name.	Shares.	Amount.
J. W. Skinkle	250	$25,000 00
Wm. B. Bushnell	500	50,000 00
E. Jungenfeld	300	30,000 00
Jos. Koeningsberg, per E. Jungenfeld, his attorney-in-fact	250	25,000 00
Leo Rassieur	200	20,000 00
Wm. B. Bushnell, as treasury stock	500	50,000 00

That on the 22d day of September, A. D. 1884, at the Grand Pacific hotel, northwest corner Clark and Jackson streets, Chicago, Illinois, at the hour of 2 o'clock p. m., they convened a meeting of the subscribers aforesaid pursuant to notice required by law, which said notice was deposited in the post office, properly addressed to each subscriber, ten days before the time fixed therein, a copy of which said notice is as follows, to wit:

To —— ——:

You are hereby notified that the capital stock of the Consolidated Ice Machine Company has been fully subscribed, and that a meeting of the subscribers of such stock will be held at the Grand Pacific hotel, northwest corner of Clark and Jackson streets, Chicago, Illinois, on the twenty-second day of September, A. D. 1884, at 2 o'clock p. m., for the purpose of electing a board of directors for said company and for the transaction of such other business as may be deemed necessary.

EDMUND JUNGENFELD,
JOSEPH KOENINGSBERG,
LEO RASSIEUR, *Commissioners.*

That said subscribers met at the time and place in said notice specified and proceeded to elect directors, and that the following persons were duly elected for the term of one year, viz: Jacob M. Skinkle, William B. Bushnell, Edmund Jungenfield, Leo. Rassieur.

(Signed) J. KOENINGSBERG,
LEO RASSIEUR,
E. JUNGENFELD,
Commissioners.

58 STATE OF MISSOURI, }
City of St. Louis, } ss:

On this twenty-fifth day of September, A. D. 1884, personally appeared before me, a notary public in and for said city, in said State, Edmund Jungenfeld, Joseph Koeningsberg, and Leo Rassieur and

made oath that the foregoing report by them subscribed is true in substance and in fact.

[SEAL.] BENJ. A. SUPPAN,
Notary Public.

My term expires April 17, 1887.

Filed September 27, 1884.

HENRY D. DEMENT,
Secretary of State.

No. 1,244,240. Recorded April 3, 1890, at 12 m.
JOHN STEPHENS, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, John Stephens, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed and foregoing is a true and correct copy of the record of a certain instrument filed in my office the third day of April, A. D. 1890, as document No. 1,244,240 and recorded in Book 34 of Corporations, at page 229.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this eleventh day of December, A. D. 1891.

[SEAL.] JOHN STEVENS, *Recorder.*

59 STATE OF ILLINOIS, DEPARTMENT OF STATE.

Henry D. Dement, secretary of state.

To all to whom these presents shall come, Greeting:

Whereas it being proposed by the persons hereinafter named to form a corporation under an act of the General Assembly of the State of Illinois entitled "An act concerning corporations," approved April 18, 1872, in force July 1, 1872, and the amendments thereto, the objects and purposes of which corporation are set forth in a statement duly signed and acknowledged according to law and this day filed in the office of the secretary of state:

Now, therefore, I, Henry D. Dement, secretary of the State of Illinois, by virtue of the power vested in and the duties imposed upon me by law, do hereby authorize, empower, and license Edmund Jungenfeld, Joseph Koeningsberg, and Leo Rassieur, the persons whose names are signed to the before-mentioned statement as commissioners, to open books for subscription to the capital stock of the Consolidated Ice Machine Company, such being the name of the proposed corporation as contained in the statement, at such times and places as the said commissioners may determine.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State. Done, at the city of Springfield, this [SEAL.] nineteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence of the United States the one hundred and nineth.

HENRY D. DEMENT,
Secretary of State.

60 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF SECRETARY.

I, Isaac N. Pearson, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of articles of incorporation of the Consolidated Ice Machine Company, the original of which is now on file in this office.

In witness whereof I hereto set my hand and affix the [SEAL.] great seal of State, at the city of Springfield, this nineth day of December, A. D. 1891.

I. N. PEARSON,
Secretary of State.

The recorder's office is authorized by law and is prepared to furnish "abstracts of title," commencing since the great fire of October, 1871, and running to date, to any and all real estate in Cook county.

That the furnishing of these abridged compilations of the evidence of ownership properly belongs to this office, where the records upon which they are based are officially made up and preserved, is now generally conceded.

This office is also able to furnish, with daily increasing facilities, abstracts antedating the time of the great fire to a large portion of city and county real estate.

There have been placed of record and come into possession of this office since 1872 by the authority of the county board, for the general availment and benefit of property owners, over ten thousand original ante-fire abstracts.

A large number of these are letter-press copies, which are justly preferred to any that can now be made up from ante-indices.

All of these abstracts antedating the great fire begin with the government, the canal or school trustees, or with an assumption of good title in some one, so that they are always acceptable in business transactions. They run in most cases to a date since the great fire of 1871.

61 The early portions of all the abstracts cover for a long period of years large tracts, giving always the early chain and history of the title to entire additions and subdivisions, embracing ten, twenty, and hundreds of acres of land now in the best parts of the city. Of course, in all instances where these abstracts were brought down (before recording them) to a date since the fire, the connection with the present records is complete, and they can be continued at any time to date at the recorder's office.

In all cases where these abstracts (starting with large tracts of land or numerous lots) do not reach to a day since the great fire, or where parts of this property, owned in smaller tracts and separate lots at this time, are not represented in the abstract down to the date of its last examination, the abstracts may be made available as far as this latter property is represented, and thence it may be continued from the ante-fire indices to any day desired.

Recorder Authorized to Make Abstracts of Title.

An act to authorize recorders of deeds in counties where recorders of deeds are elected to keep abstracts books, to make abstracts of title, and fixing the fees and compensation therefor.

SECTION 1. Be it enacted by the people of Illinois, represented in the General Assembly. That in all counties where a recorder of deeds is elected, in which said recorder of deeds has heretofore been, or shall hereafter be, required by the county board to keep abstract books, such recorder shall, and he is hereby authorized to keep judgment dockets and indexes thereto, tax-sale books with indexes thereto, and such other books as are usual or necessary to be kept for the purpose of making complete abstracts of title to real estate. Provided, that nothing in this act shall be construed to empower the recorder to prevent the public from examining and taking memoranda from all records and instruments filed for record, indexes and other books in his official custody.

Every recorder of deeds keeping such books is hereby authorized, and it shall be his duty to make and certify under the seal of his office for all persons desiring the same abstracts of title to real estate in his county, and to charge therefor in counties of the third class not to exceed the following fees: For each certificate certifying to the condition of the title as shown by such abstract, judgment, and tax books the sum of three dollars ($3), said sum of three dollars ($3) to include the showing of one instrument of conveyance, incumbrance, or release thereof, judgment or tax sale.

For each additional instrument of conveyance, incumbrance, or release thereof, the sum of one dollar ($1). For each additional judgment or tax sale, the sum of seventy-five (75) cents.

62 For chancery and probate court proceedings necessary to be shown, one dollar ($1) per page. Which fees shall be accounted for by such recorder in like manner with the fees received by him for recording.

And every such recorder shall, for his services in keeping such books and making such abstracts of title in counties of the third class, receive a salary of one thousand dollars per annum, to be paid only out of the fees of his office actually collected, which compensation shall be in addition to the salary allowed him for his duties as recorder.

Every such recorder shall before making and certifying any such abstracts of title give a bond with sufficient security, to be approved by the judge of the county court, payable to the people of the State of Illinois, in the sum of twenty thousand dollars ($20,000), conditioned to secure the accuracy and correctness of any and all such abstracts of title, and to indemnify any and all persons purchasing such abstracts from such recorder, for all actual losses or damages which they may sustain by reason of any errors, mistakes, or omissions in any such abstracts of title, which bond shall be filed in the office of the secretary of state, and a copy thereof entered upon the records of the county court. Approved: June 16, 1887.

Further explanation or information may be obtained by application at the recorder's office, Chicago, Ill.

P. S.—All orders by mail or letters of inquiry promptly attended to.

63

EXHIBIT H.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all people to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Theresa M. Boyle, James L. Boyle, Annie M. Boyle, Cora T. Boyle, and Robert J. Boyle, November 9, 1891, and recorded in Liber D 45, page 446. Said record has been carefully compared with the original, and is a correct transcript of the whole thereof.

In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this [SEAL.] sixteenth day of December, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

W. E. SIMONDS,
Commissioner.

Liber D 45,
page 446.

In consideration of the sum of one dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, we, Theresa M. Boyle, widow of James Boyle, deceased; James L. Boyle, Annie M. Boyle, Cora T. Boyle, and Robert J. Boyle, children and heirs-at-law of said James Boyle, deceased, all of the city
64 of San Antonio, county of Bexar, State of Texas, have sold, assigned, transferred, and set over, and by these presents do hereby sell, assign, transfer, and set over, unto the De La Vergne Refrigerating Machine Company, a corporation organized and doing business under the laws of the State of New York, all of their and each of their rights, titles, and interests in and to letters patent of the United States number 175,020, issued to James Boyle, his heirs and assigns, March 21, 1876, for improvements in gas-liquefying pumps, together with all claims for past infringements thereof and rights of suit or action respecting the same, saving and excepting the right to recover from Hugh Hamilton, of Houston, Harris county, Texas, for infringements on account of machines heretofore built and sold or operated by him in the State of Texas and machines which may hereafter be built or operated by him in the said State of Texas or built and sold by him in said State and operated by others therein during the term of said patent; the same to be held and enjoyed by the said The De La Vergne Refrigerating Ice Machine Company for its own use and behoof and for the use and behoof of its successors and assigns for and unto the full end of the

term *of* for which said letters patent are or may be granted as fully and entirely as the same could have been held and enjoyed by us and each of us had this assignment and sale not been made.

In witness whereof we hereunto set our hands and seals this 9th day of November, 1891.

[SEAL.] THERESA M. BOYLE.
[SEAL.] JAS. L. BOYLE.
[SEAL.] ANNIE M. BOYLE.
[SEAL.] CORA T. BOYLE.
[SEAL.] ROBT J. BOYLE.

65 STATE OF TEXAS, }
County of Bexar. }

Before me, William S. Temple, a notary public in and for Bexar county, Texas, on this day personally appeared Theresa Boyle, James L. Boyle, Annie M. Boyle, Cora S. Boyle, and Robert J. Boyle, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they severally executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 9th day of November, 1891.

[SEAL.] WM. S. TEMPLE,
Notary Public, Bexar County, Texas.

Recorded December 8, 1891. E. B. C., A. N. P.

(Endorsed:) 25859. D., '91.

EXHIBIT I.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Thomas L. Rankin November 9, 1891, and recorded in Liber D 45, page 446; said record has been carefully compared with the original and is a correct transcript of the whole thereof.

66 In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed
[SEAL.] this sixteenth day of December, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

W. E. SIMONDS,
Commissioner.

Liber D 45, }
page 447. }

In consideration of the sum of one dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, I, Thomas L. Rankin, of the city of Philadelphia, State of Pennsyl-

vania, have sold, assigned, transferred, and set over and by these presents do sell, assign, transfer, and set over unto the De La Vergne Refrigerating Machine Company, a corporation organized and doing business under the laws of the State of New York, all my right, title, and interest in and to letters patent of the United States No. 175,020, issued to James Boyle, his heirs and assigns, March 21, 1876, for improvements in gas-liquefying pumps, together with all claims for the past infringements thereof and all rights of suit or action respecting the same; the same to be asserted, held, and enjoyed by the said The De La Vergne Refrigerating Machine Company for its own use and behoof and for the use and behoof of its successors and assigns for and unto the full term for which said letters patent are or may be granted.

In witness whereof I have hereunto set my hand and seal this 9th day of November, 1891.

[SEAL.] THOMAS L. RANKIN.

67 STATE OF TEXAS, }
County of Bexar. }

Before me, Wm. S. Temple, a notary public in and for Bexar county, Texas, on this day personally appeared Thomas L. Rankin, proved to me on the oath of James L. Boyle to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 9th day of November, 1891.

[SEAL.] WM. S. TEMPLE,
Notary Public, Bexar County, Texas.

Recorded December 8, 1891. E. B. C., A. M. P.

(Endorsed:) 25859. D., '91.

EXHIBIT J.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the affidavit of Jacob W. Skinkle in the matter of the letters patent granted James Boyle March 21, 1876, numbered 175,020, for improvements in gas-liquefying pumps.

In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this [SEAL.] fourteenth day of December, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

W. E. SIMONDS,
Commissioner.

68 In the United States Patent Office.

In the Matter of the Patent of JAMES BOYLE, No. 175,020, "Gas-Liquefying Pump."

Petition by Louis Tuffly, administrator of James Boyle, deceased.

STATE OF ILLINOIS, } ss:
County of Cook, }

Jacob W. Skinkle, being duly sworn, makes oath, deposes, and says: I am fifty-seven years of age and reside in the city of Chicago, Cook county, Illinois. I am and ever since its organization have been president of the Boyle Ice Machine Company, a corporation organized under the laws of the State of Illinois in December, 1878, having its principal place of business in Chicago, in the said county of Cook. About the time of the organization of said corporation it was represented that said letters patent of the United States granted to James Boyle, No. 175,020, were owned by Mrs. Bushnell, and the legal title of said patent and other patents was transferred to Samuel W. Adams, in trust for said corporation, as will appear by the records of said Patent Office. So far as I know and believe all parties interested in the organization of such company fully believe that the title of the said Mrs. Bushnell to the said title was valid and perfect, and the privilege of using such patent, which was then supposed to be valid, was one consideration for the investment of capital in the business of the corporation. The said corporation has manufactured and sold a large number of ice and refrigerating machines containing compression pumps substantially like that shown and described in said patent to said James Boyle, which machines were put into use in many places throughout the United States, both North and South. Such manufacture and sale was commenced soon after the organization of the company, and was contin-ed for more than five years.

69 In the year 1875 I was treasurer of Crane Brothers Manufacturing Company in Chicago, and I know that during that year David Boyle, a brother of the said James Boyle, caused said company to build for him a pair of compressed pumps for an ice machine at Austin, Texas, which were substantially like the said patent to said James Boyle. I also know that the firm of D. Boyle & Company built and sold for use eight or nine ice machines containing such compression pumps, commencing in the year 1875 and prior to the latter part of the year 1878.

During the time that the Boyle Ice Machine Company was manufacturing and selling ice and refrigerating machines I had no reason to suppose that the said patent to the said James Boyle was invalid and fully believed that if was good and valid and that it had been regularly issued, and that S. W. Adams was the owner thereof as trustee.

I have read a copy of the petition of Louis Tuffly, administrator sent to S. W. Adams. Said petition, as I understand it, omits important facts and some of the statements therein are incorrect. I

am unable at this time to furnish evidence relating to such matters, as the same must be procured from Texas. The Boyle Ice Machine Company made and sold a refrigerating machine to the Anheuser-Busch Brewing Association, at Houston, Texas, and suits have been commenced at Galveston in the United States circuit court by the said Tuffly, administrator, against the said Anheuser-Busch Brewing Association for the infringement of said patent to the said James Boyle, and as president of the said Boyle Ice Machine Company I have had occasion to make myself familiar with many matters relating to or connected with the matter in controversy. I am informed and believe that the said Thos. L. Rankin induced the widow of James Boyle to leave the State of Texas with her children and go to Hot Springs, Arkansas, so that he could apply for letters of administration on the estate of James Boyle, deceased, on the ground that there were no kith or kin in Texas, he having some personal object in view, and he was, as I am informed, so appointed, but was subsequently removed on the application of the widow, who, while in Hot Springs, had been informed by friends what Rankin was doing.

I am informed and believe that the said widow, Theresa Boyle, duly qualified as administratrix of said estate and filed her bond and an inventory, as required by law, and that an order was made allowing her to sell the said patent, which she did sell in January, 1878, to the said Bushnell, selling the interest of the estate and her own interest as an heir, being one-half under the laws of Texas.

70 I am informed and believe that the said Tuffly was appointed administrator for the purpose of commencing the said suits, and that the whole matter is a speculation on the part of certain attorneys, who are prosecuting the matter contingently. I am informed and believe that in the said suits in the United States circuit court the question whether the said Tuffly is the legal administrator of the estate of the said James Boyle has been raised. I am also informed and believe that the proceedings to test the legality of the appointment of the said Tuffly as administrator were commenced in a State court in Texas, and that said question as to whether said Tuffly is the legal administrator is now pending by appeal in the supreme court of the State of Texas and will probably be soon decided by that court. Proof as to most of these matters can be made by certified copies of the records of the State courts in Texas which I have not now time to procure.

JACOB W. SKINKLE.

Subscribed and sworn to before me this 31st day of August, A. D. 1885.

[SEAL.] ALBERT H. ADAMS,
Notary Public.

(Endorsed:) United States Patent Office. Louis Tuffly, administrator as to patent No. 175,020. Aff't Skinkle. United States Patent Office, September 4, 1885.

EXHIBIT K.

Whereas I, Thomas L. Rankin, was, on or about the ninth day of March, 1876, appointed temporary administrator of the estate of James Boyle, deceased, and as such administrator was entitled to receive letters patent of the United States for an invention of said James Boyle, which patent was issued March 21, 1876, and bears number 175,020;

71 And whereas the De La Vergne Refrigerating Machine Company is the owner of said letters patent and all rights thereunder by various assignments, and it is desired that this assignment shall be made in confirmation of said title:

Now, therefore, in consideration of the sum of one dollar ($1) and other good and valuable considerations to me in hand paid, the receipt of which is hereby acknowledged, I, Thomas L. Rankin, do hereby sell, assign, transfer, and set over unto the De La Vergne Refrigerating Machine Company all the right, title, and interest in, to, and under said letters patent No. 175,020 which I ever had, now have, or could at any time have had or possessed as administrator of the estate of said James Boyle, deceased, as aforesaid, it being the intention to hereby ratify and confirm the title of the said The De La Vergne Refrigerating Machine Company to said letters patent and to all claims for past infringements thereof and all rights of suit or action on account of infringements of said patent or damage claims which have heretofore at any time arisen thereunder.

The same to be held and enjoyed by the said The De La Vergne Refrigerating Machine Company, its successors, successors in business, and assigns, for and unto the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same could have been held and enjoyed by me as such administrator if this assignment and sale had not been made; and I hereby individually and personally ratify and confirm all previous assignments under which said The De La Vergne Refrigerating Machine Company has derived any rights whatsoever.

In witness whereof I, the said Thomas L. Rankin, for myself and as such administrator of the estate of James Boyle, deceased, have hereunto set my hand and seal this 31st day of December, 1891.

[SEAL.] THOMAS L. RANKIN,
Administrator of the Estate of James Boyle, Deceased.

Witnesses:
OWEN V. HUGHES.
HUBERT A. BANNING.

(Endorsed:) Filed January 7, 1892. Wm. H. Bradley, clerk.

72 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the file-wrapper and contents in the matter of the

letters patent granted James Boyle March 21, 1876, number 175,020, for improvement in gas-liquefying pumps.

In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this [SEAL.] twentieth day of May, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth.

W. E. SIMONDS, *Commissioner.*

Petition.

To the Commissioner of Patents:

The petition of James Boyle, of Houston, Texas, respectfully represents that your petitioner has invented new and useful improvements in gas-liquefying pumps for ice machines, which he verily believes has never before been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same upon the terms and conditions expressed in the act of Congress in 73 that case made and provided, *his* having paid fifteen dollars into the Treasury and complied with the other provisions of the said act. Your petitioner would further pray that Alexander & Mason, of Washington, D. C., be recognized as his sole lawful solicitors and advocates for him and in his name to solicit and advocate, amend this application, to receive the patent if granted, and in all other respects to do all your petitioner could do if personally acting in the premises.

JAMES BOYLE.

To all whom it may concern:

Be it known that I, James Boyle, of Houston, in the county of Harris and in the State of Texas, have invented certain new and useful improvements in gas-liquefying pumps for ice machines, and do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings and to the letters of reference marked thereon, making a part of this specification.

The nature of my invention consists in the construction and arrangement of a pump used in ice machines for liquefying the gas, as will be hereinafter more fully set forth.

In order to enable others skilled in the art to which my invention appertains to make and use the same I will now proceed to describe its construction and operation, referring to the annexed drawing, in which—

Figure 1 is a longitudinal section of my invention.

Figure 2 shows one of the valves therein.

A represents the pump cylinder provided with heads B and B′, bolted thereon in the usual manner.

C is the piston or plunger provided with the piston rod D, which passes through the head B and through a stuffing box, E, thereon.

G is a tube or chamber running the entire length on the outside of the cylinder and provided with the air inlet G′. This air tube communicates with the interior of the cylinder A close to the head B, through a passage *a*, and at the other end it communicates with one end of an air tube, G^2, running across the head B′ on the outer side.

This air tube, G^2, is divided centrally by a cross-partition, *b*, and the other end of said tube communicating with the outlet G^3.

74 The various air tubes or chambers are preferably cast with the cylinder and head as shown in the drawing, but may be arranged in any other suitable manner.

Through the air tube or chamber G^2, on each side of the partition *b*, is screwed a cage, *x*, the upper end of which extends up into an aperture in the cylinder head B′, and at the joint are suitable shoulders, *x x*, so that when the cage is properly screwed up the joint will be perfectly air-tight.

On the upper end of the cage H is formed a seat, *d*, for the inlet valve I, which has a stem or rod, J, extending downward, through guides *h h*, within said cage, and the valve held down to its seat by a spiral spring, *i*, surrounding the stem between the guides. On the upper end of the cage H′ is formed a seat, *d′*, for the outlet valve I′. The valve stem J′, guides *h′*, and springs *i′* are the same as in the first cage, except that the spring is arranged to hold the valve up to its seat. The lower ends of the cages H H′ are made by screw caps L, forming tight joints with the chamber G^2.

The operation of the pump is readily understood without further explanation.

In running ice machines in which a pump is used to liquefy the gas the great drawback to their successful operation has been the difficulty of keeping the pump doing its duty; especially has this been the case where a double-acting pump is used.

By my construction of the pump the following important advantageous results are obtained, as demonstrated by actual experiments, viz:

Erase as per amendment, Dec. 20, '75.

First. In reducing the heating of the pump one-half.

Second. Having only fifteen to twenty pounds pressure on the stuffing box instead of 150 to 200 pounds, which is the general pressure met in liquefying ammonia gas.

Third. The valves and their seats can be taken out and replaced with duplicate ones cleaned and in good order and with but a few minutes' work.

Fourth. Having but one end of the pump to look out for, the piston head can work so as to discharge nearly every particle of compressed gas, and no valve is needed in the piston head.

Words and sentences enclosed between rules erased in copy.

Having thus fully described my invention, what I claim as new and desire to secure by letters patent is—

1. A single-acting pump for liquefying gas for ice machines, in which the gas to be compressed has a free passage into
75 the pump over the piston head as well as through the inlet valve under the piston head, where it is compressed, thus doing away with the necessity of having a valve in the piston head, as set forth.

Erase and insert "A," as per amend't, Dec. 20, 1875.

2. In a pump for liquefying gas for ice machines I claim the removable cages H H', with valve seats, valves, and guides, substantially as and for.

In testimony that I claim the foregoing I have hereunto set my hand and seal this 29th day of October, A. D. 1875.

JAMES BOYLE.

C. L. EVERT.
E. A. METCALF.

Oath.

CITY OF HOUSTON, }
County of Harris, State of Texas. }

On the 29th day of October, A. D. 1875, before me, the subscriber, duly qualified to administer oaths, personally appeared the within-named James Boyle, and made solemn oath that he verily believes himself to be the original and first inventor of the within-described gas liquefying pump for ice machines, and that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

In testimony whereof I have hereunto subscribed my name and affixed the impress of my official seal, in the city of Houston, day and year above written.

[SEAL.]

A. W. SPENCER,
Notary Public for Harris County, Texas.

(Endorsed:) I. United States Patent Office. 23290. November 24, 1875. Copied December 19. Examiner's room, No. 24. M. E. S.

76 UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *December* 15, 1875.

Application for gas pump, etc. Filed November 24, 1875.

James Boyle, Alexander & Mason, present:

Examined. The specification is not sufficiently full as to the reasons and objects of the several constructions to sustain the allegation of advantages made on page 4, in the fourth of which the conclusion does not appear to follow from the premise.

Words and sentences enclosed between rules erased in copy.

In first claim the dispensing with a valve in the piston in no-wise follows from the construction of passage *a*. The construction, however, is clearly shown in patents of A. W. Lloyd, May 3, 1859, No. 23849 (lift pumps) and Mignon & Rouart, September 26, 1865 (Fig. 6), No. 50212 (ice machines).

Second claim is fully answered by patent of R. M. Marchant, February 21, 1871, No. 112,060 (air compressing). Claims rejected.

B. W. POND,
Second Assistant.

J. B. DURNALL, *Examiner.*
144.
94.

(Endorsed:) 144. 94. Official letter. December 15, 1875.

WASHINGTON, D. C., *December* 18, 1875.

Honorable Commissioner of Patents:

SIR: We amend the application of James Boyle for patent on gas pump, filed November 24, 1875, as follows:

77 Cancel page 4 of the specification.

Cancel claims and insert:

First. In combination with the cylinder A and its head B B' I claim the solid piston head C, the tube G, extending the entire length of the cylinder, the air tubes G' G^2, air inlet *a*, cages H H', having valves I I', and the outlet G^3, all constructed substantially as and for the purposes herein set forth.

A.

Second. In combination with the cylinder A and air tube G^2 I claim the removable cages H H', provided with spring valves and exterior screw-threads and exterior screw-caps L L, all substantially as and for the purposes herein set forth.

Respectfully,

ALEXANDER & MASON, *Attorneys.*

(Endorsed:) United States Patent Office, December 18, 1875.

Memorandum of Fee Paid at United States Patent Office.

(Be careful to give correct serial number.)
Serial No. 18.
Inventor,
James Boyle.
Patent to be issued to
Inventor.
Name of invention as allowed
gas pumps for ice machines.

Words and sentences enclosed between rules erased in copy.

Date of payment,
March 18, 1876.
Fee:
Final, $20.00.
Date of filing.
Date of circular of allowance.
The Commissioners of Patents will please apply the accompanying fee as indicated above.
Attorney send patent to
Alexander & Mason, city.

(Endorsed:) United States Patent Office, March 18, 1876.

78 To the honorable Commissioner of Patents of the United States, Washington, D. C.:

The petition of Louis Tuffly, of Houston, in the county of Harris, State of Texas, administrator of the estate of James Boyle, deceased, respectfully represents—

That James Boyle, of said last-mentioned place, did in his lifetime invent a new and useful improvement in gas-liquefying pumps for a patent for which he duly filed an application in the United States Patent Office on the 24th day of November, 1875.

That on the 27th day of November, three days after the filing of said application, the said James Boyle died, as will more fully appear from the records of the county court of Harris county, certified copies of which, so far as material in this matter, are hereto attached and made a part of this petition; that on the 21st day of March, 1876, the Commissioner of Patents issued a writing duly signed and sealed and purporting to be a grant unto the said Boyle, at that time deceased, as aforesaid, of a patent for the said invention in pursuance of the said application, the same being No. 175,020.

That on the 9th day of March, 1876, temporary letters of administration were granted Thomas L. Rankin by the district court of Harris county, State of Texas, in vacation, and said Rankin continued to be such administrator until the — day of July, 1876, when, by an order entered in the county court of said county, at a regular term thereof (the jurisdiction of the district court of said county in probate matters having been taken from it and vested in said county court by the adoption of the constitution of 1875 of the State of Texas, which went into effect on the — day of April, 1876), said Thomas L. Rankin was in effect removed from the administration of the said estate and Theresa Boyle, widow of the said James Boyle, was authorized to administer on the same as the survivor of the community interest on giving bond and qualifying as prescribed by law, all of which is shown in the certified copies from the records of said court hereto attached and made a part of this petition and marked Exhibit A.

That the said Theresa Boyle never qualified as administratrix of said estate, and your petitioner was appointed administrator of the same on the — day of ——, A. D. 1885, as shown by the cer-

79 tified copies of the order appointing him such and his letters

of administration hereto attached and made a part of this petition and marked Exhibits B and C.

Petitioner further represents that the said James Boyle died intestate, leaving no property beyond a small amount of household furniture and clothing, except his interest in said invention, secured by said application for said patent; that he left four young children, the oldest of whom was then but ten years of age, and all of whom are still living; that neither his said wife nor his said children had any means or property in their own right.

That said widow was forced by her poverty to place two of her children in an orphan asylum, where they remained until the summer of 1878, and that she had been but barely able to maintain herself and said children by the most severe labor, much of it being of a manual character; that thus said estate has never had any means with which the rights of said widow and children in and to said invention could be prosecuted or perfected until the present time, when for the first time since the death of the said Boyle friends have been found willing to advance a reasonable sum for the prosecution of said rights in and claims to said invention.

That, as shown by the foregoing petition, said patent was issued by mistake to the said James Boyle, his heirs or assigns, instead of being issued to the said Thomas L. Rankin, administrator of said estate, he being the administrator of the same on said 21st day of March, 1876, when said patent was issued.

The premises considered, petitioner prays that on consideration of the facts herein presented and the affidavits in support of the same that letters patent be issued *nunc pro tunc* to the said Thomas L. Rankin as administrator of said estate for the use and benefit of the same, said letters patent to show on the face of the same said mistake and all other matters needful in reference thereto.

And your petitioner hereby appoints H. N. Low, of Washington, D. C., his attorney, with full power of substitution and revocation, to present and prosecute this application, and to prosecute upon said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at Houston, in the county of Harris, in the State of Texas, this first day of July, 1885.

LOUIS TUFFLY.

80 *Oath.*

STATE OF TEXAS, }
County of Harris. }

Louis Tuffly, the above-named petitioner, being duly sworn, deposes and says that he verily believes James Boyle to have been the original, first, and only inventor of the improvement in gas-liquefying pumps described and claimed in the said application; that the same has not been patented to the said Boyle or to himself or to others with his knowledge or consent in any other country; that the same had not to his knowledge or consent been in public use or

on sale in the United States for more than two years prior to said application, and he does not know and does not believe that the same was ever known or used prior to the said Boyle's invention thereof, and that the statements contained in the foregoing petition are true.

LOUIS TUFFLY.

Subscribed and sworn to before me this first day of July, 1885. Witness my hand and official seal.

[SEAL.] CHAS. E. DWYER,
Notary Public of Harris County, Texas.

THE STATE OF TEXAS, }
County of Harris. }

This day personally appeared Theresa Boyle before me, the undersigned authority, who, being duly sworn, deposes and says: My name is Theresa Boyle; I am the widow of the said James Boyle, deceased, mentioned in the foregoing petition of Louis Tuffly, administrator of the estate of the said James Boyle. I have
81 read said petition and know the contents thereof. The statements therein contained are true. My husband, as therein stated, left no means with which the rights of his estate in and to said invention could be prosecuted.

Thomas L. Rankin was unable to obtain a dollar from said estate or from me or any one else with which to look after the interests of the same in said invention. I was left a widow with four young children without any means of support and without any way of providing food for myself and them except by my own unskilled labor. I have tried for many years to get parties with sufficient means to interest themselves in said invention and have never been able to do so until recently.

THERESA BOYLE.

Subscribed and sworn to before me this first day of July, 1885. Witness my hand and official seal.

[SEAL.] CHAS. E. DWYER,
Notary Public, Harris County, Texas.

STATE OF TEXAS, }
Harris County. }

I, Alex. Erichson, clerk of the county court in and for said State and county, do hereby certify that Chas. E. Dwyer, whose signature appears above to the foregoing affidavits, is a notary public in and for said county, duly qualified and authorized to act as such.

Witness my hand and seal of said court, affixed at office, in the city of Houston, this first day of July, 1885.

[SEAL.] A. ERICHSON,
Clerk County Court, Harris County, Texas.

82 EXHIBIT A.

In vacation.

MARCH 9, 1876.

Estate of JAMES BOYLE, Deceased.

Thomas L. Rankin, of Harris county, having made application for appointment as temporary administrator of the estate of James Boyle, deceased, and having given bond in the sum of five hundred dollars, with C. C. Wiggin and Ed. White as sureties, and having taken the oath required by law, he is hereby authorized to act as temporary administrator of said estate of James Boyle, deceased, until the appointment of a permanent administrator.

R. D. WESTCOTT,
C. D. C., H. C.

TUESDAY, *July* 18, 1876.

207. Estate of JAMES BOYLE, Deceased.

On this eighteenth day of July, 1876, came on to be heard the application of Theresa Boyle to be allowed to qualify as the surviving wife of said James Boyle, deceased, to administer as such the community estate acquired during the marriage between her and James Boyle, and it appearing to the court that said applicant was the lawful wife of said James Boyle and by him had children, which are minors, and that during their marriage they acquired community property; that said James Boyle was a citizen of said county and has departed this life, and that due notice of said application has been given—

83 It is ordered, adjudged, and decreed by the court that she be, and hereby is, appointed the administratrix of the community estate aforesaid, with all the powers and duties appertaining to her to administer, manage, control, and dispose of said estate, as the surviving wife of said decedent, without reporting to the court, and that she give bond in the sum of ($2,500) twenty-five hundred dollars, return an inventory, and qualify within the time prescribed by law.

207. Estate of JAMES BOYLE, Deceased.

It is ordered by the court that Thomas L. Rankin, temporary administrator of said estate, be cited to appear at the next term of court and to make a full and complete showing of all of the property that has come into his hands and of his acts and doings as such temporary administrator and of the condition of said estate.

207. Estate of JAMES BOYLE.

THURSDAY, *March* 21, 1878.

The unpaid costs of this administration are adjudged against the administratrix, Theresa Boyle, and the sureties on her bond, J.

W. Cleary, James Rogers, and John Whelen, for which let execution issue.

EXHIBIT B.

Certified Copy Decree of the District Court.

720. Estate of JAMES BOYLE, Deceased.

From Minutes, Friday, April 17, 1885, estate of James Boyle.

On this day came on to be heard the application of Louis Tuffly for letters of administration on the estate of James Boyle,
84 deceased, on appeal from the county court, and the said Tuffly appearing by his attorney, and W. B. Bushnell, for the purpose of contesting the application, also appearing by his attorney, the parties announced ready and the trial proceeded, and it appearing to the court that the said James Boyle died intestate in Harris county, Texas, on the twenty-seventh day of November, 1875, and that temporary letters of administration were taken out on his estate in district court of said county on the second day of ——, 18—, and that afterwards Theresa Boyle, widow of the said James Boyle, deceased, attempted to qualify as survivor of the community interest of said estate, and that administration on said estate has never been closed, and that there still exists a necessity for a further administration of the same, and it also appearing that the said Tuffly is in no way disqualified by law from administering on said estate, and that he is entitled to letters of administration on the same, the said Theresa Boyle, surviving wife of the said James Boyle, having joined in application for his appointment, and no creditor or other person having any interest in said estate appearing to resist the granting of said letters, it is therefore ordered, adjudged, and decreed by the court that the said Louis Tuffly be, and he is hereby, appointed administrator of said estate of James Boyle, deceased, and it is ordered that letters of administration be issued to him on his giving bond in the sum of two thousand dollars and qualifying according to law. Costs of this court and the county court incurred since the said W. B. Bushnell made himself a party to the contest adjudged against him, for which let execution issue. It is also ordered that a certified copy of this decree be forthwith transmitted by the clerk of this court to the clerk of the county court of Harris county for the observance of said court; to which ruling of the court the said W. B. Bushnell excepts in open court and gives notice of appeal to the supreme court.

THE STATE OF TEXAS, }
County of Harris. }

I, E. H. Vasmer, clerk of the district court of Harris county, do hereby certify that the foregoing is a true and correct copy of the original order made and entered of record in the estate of
85 James Boyle, deceased, as the same appears of record in my office in Minute Book T, pages 478 and 479.

Witness my hand and official seal at office, in Houston, this the 29th day of April, A. D. 1885.

[SEAL.]

E. H. VASMER,
Clerk District Court, Harris County,
By B. F. CULMORE, *Deputy.*

Filed April 29, 1885.

ALEX. ERICHSON,
C. C. C., H. Co.,
By L. H. WARING, *Deputy.*

(Approved:)
W. C. ANDERS,
County Judge.

THE STATE OF TEXAS, }
County of Harris. }

I, Alex. Erichson, clerk of the county court of Harris county, Texas, do hereby certify that the above and foregoing (4) four pages of manuscript contain a full and complete transcript of all the proceedings had in the matter of the estate of James Boyle, deceased, from the first entry in reference thereto down to the date of the filing of an application for temporary letters of administration on said estate by L. Tuffly on — day of ——, A. D. 1884, together with the decree of the district court of Harris county, Texas, appointing him permanent administrator of said estate, certified to this court for observance and recorded in Book T, page 478, of the records of the minutes of district court, as the same appears of record in the office of the clerk of the county court of Harris county, Texas.

Witness my hand and seal of office this first day of July, 1885.

[SEAL.]

A. ERICHSON,
Clerk County Court, Harris County, Texas.

86

EXHIBIT C.

STATE OF TEXAS, }
County of Harris. }

I, Alex. Erichson, clerk of the county court in and for said county and State, hereby certify that Louis Tuffly is the administrator of the estate of James Boyle, deceased, he having duly and legally qualified as such on the — day of ——, A. D. 1885, and is entitled to these letters of administration which I hereby accordingly issued to him, the said Louis Tuffly.

Witness my hand and the seal of said court, affixed at office, in the city of Houston, this first day of July, A. D. 1885.

[SEAL.]

A. ERICHSON,
Clerk County Court, Harris County, Texas.

STATE OF TEXAS, }
County of Harris. }

I, W. C. Anders, presiding judge of said county court of Harris county, hereby certify that Alex. Erichson, whose signature appears

to the foregoing certified copies, is the county clerk of Harris county and the clerk of said court, and that his certificates to the same are in due form of law and entitled to full faith and credit.

Witness my hand this first day of July, 1885.

[SEAL.] W. C. ANDERS,
County Judge, Harris County, Texas.

87 STATE OF TEXAS, }
County of Harris. }

I, Alex. Erichson, clerk of the county court in and for said county, hereby certify that the Honorable W. C. Anders, whose signature appears next above, is the county judge of Harris county, Texas, and the presiding judge of the county court in and for said *court.*

Witness my hand and the seal of said court, affixed at office, in the city of Houston, this 1st day of July, A. D. 1885.

[SEAL.] A. ERICHSON,
Clerk County Court, Harris County, Texas.

(Endorsed.)

Serial No. 144.
94. Paper No. 4.
Petition filed July 20, 1885.
United States Patent Office, July 20, 1885.
Estate of James Boyle, comprising
Order appointing temporary adm'r.
" " administratrix.
" " adm'r to return account
Unpaid costs adjudged against
Theresa Boyle, adm'r.
Decree in dist. court ap't'g L. Tuffly adm'r.
$4.00.

Serial No. 144.
94.
Paper No. 5.
Notice of hearing.
Dated July 21, 1885.
Not in file.

88 1875.

144.
94.

No. 175,020.
James Boyle,
Of Houston,
County of Harris,
State of Texas.
Gas-liquefying pump for ice machines.

Rec'd Nov. 24, 1875.
Petition, " " "
Affidavit, " " "
Specification, " " "
Drawing, " " "
Model, " " "
Cert. dep.
1. Cash, $14, Nov. 24, 1875.
Add'l fee cert.
1. " " cash, $20, March 18, 1876.
Examined, J. B. Durnall, Jan. 4, 1876.
2. Issue, Jan. 5, 1876, Knight.
4. Patented, March 21, 1876.
Circular, Jan. 6, 1876.
Alexander & Mason, present.

1875.

Contents.

Application, 1 paper.
1. Application.
2. Rej. Dec. 15, 1875.
3. Amend't, Dec. 20, 1875.
4. Petition, July 20, 1885.
5. Notice of hearing, July 21, 1885.
Title: Improvement in gas-liquefying pumps.
J. F. T.
M. H.

(Endorsed:) 11778. D., 1892.

89 One the same day, to wit, on the seventh day of January, 1892, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, Northern Division, }

Subpœna. Issued January 7, 1892.

The United States of America to John Featherstone, George Featherstone, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of February next, to answer the bill of complaint of the De La Vergne Refrigerating Machine Company, a corporation, this day filed in the clerk's office

of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago [SEAL.] aforesaid, this seventh day of January, in the year of our Lord one thousand eight hundred and ninety-two, and of our Independence the one hundred and sixteenth year.

WM. H. BRADLEY, *Clerk.*

90 *Memorandum.*

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Circuit Court of the United States of America, Northern District of Illinois, *ss:*

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.* } In Chancery.

To said defendants:

Take notice that the plaintiff will move this honorable court on the eighteenth day of January, A. D. 1892, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above-named defendants in accordance with the prayer of the bill therein.

Yours, etc.,

BANNING & BANNING & PAYSON,
Complainant's Solicitors.

Dated this seventh day of January, A. D. 1892.

91 *Marshal's Return.*

I have served the within writ within my district in the following manner, to wit: Upon John Featherstone, therein named, on the eighth day of January, A. D. 1892; also upon George Featherstone, therein named, on the eighth day of January, A. D. 1892; upon Albert J. Featherstone, therein named, on the eighth day of January, A. D. 1892; also upon Otto C. Butz, therein named, on the eighth day of January, A. D. 1892, as by receipt below endorsed by Knight & Brown, attorneys; also upon Clarence A. Knight, therein named, on the eighth day of January, A. D. 1892, by personally delivering to him

a true copy of the same on the aforesaid day. I also served the same upon the following-named defendant, not having been able to find him to serve personally, by leaving a true copy for him at his usual place of abode with an adult person and a member of his family, to wit (service accepted for defendants John Featherstone, George Featherstone, Arthur J. Featherstone, and Clarence A. Knight, and Otto C. Butz, Knight & Butz), upon Jacob W. Skinkle, on the eighth day of January, A. D. 1892, with Mrs. Ayres.

FRANK HITCHCOCK,
United States Marshal,
By GEORGE N. JONES, *Deputy.*

(Endorsed:) Filed January 21, A. D. 1892. Wm. H. Bradley, clerk.

Afterward, to wit, on the twenty-ninth day of January, 1892, came John Featherstone, George Featherstone, Arthur J. Featherstone, and Jacob W. Skinkle, by their solicitors, and filed in said clerk's office their demurrer to the bill in said entitled cause; which said demurrer is in the words and figures following, to wit:

92 *Demurrer.*

Circuit Court of the United States, Northern District of Illinois.

DE LA VERGNE REFRIGERATING MACHINE COMPANY, Complainant,
v.
JOHN FEATHERSTONE, GEORGE FEATHERSTONE, ARTHUR J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz, Defendants.

Demurrer. Filed January 29, 1892.

The demurrer of John Featherstone, George Featherstone, Arthur J. Featherstone, and Jacob W. Skinkle, defendants, to the bill of complaint of The De La Vergne Refrigerating Machine Company, complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demur to said bill, and for cause of demurrer show that the complainant has not in and by its said bill made or stated such a case as entitles it in a court of equity to any discovery or relief from or against these defendants touching the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants demur to the said bill and to all the matters and things therein contained and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, and they

pray to be hence dismissed with their reasonable costs in this behalf sustained.

JOHN FEATHERSTONE.
GEO. F. FEATHERSTONE.
ARTHUR J. FEATHERSTONE.
JACOB W. SKINKLE.

93 I certify that in my opinion the foregoing demurrer of John Featherstone, George Featherstone, Arthur J. Featherstone, and Jacob W. Skinkle, defendants, to the bill of complaint of The De La Vergne Refrigerating Machine Company, complainant, is well founded in law and proper to be filed in the above-entitled cause.

L. L. BOND,
Of Counsel for Defendants.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

STATE OF ILLINOIS, }
County of Cook, } ss:

The defendants John Featherstone, George Featherstone, Arthur J. Featherstone, and Jacob W. Skinkle each for himself on oath states that he has heard read the foregoing demurrer to the bill — complaint of The De La Vergne Refrigerating Machine Company in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

GEO. F. FEATHERSTONE.
JOHN FEATHERSTONE.
ARTHUR J. FEATHERSTONE.
JACOB W. SKINKLE.

Subscribed and sworn to before me this 28th day of January, A. D. 1892.

[SEAL.]

JOHN L. JACKSON,
Notary Public.

(Endorsed:) Filed January 29, 1892. Wm. H. Bradley, clerk.

94 Afterward, to wit, on the thirtieth day of January, 1892, came Otto C. Butz and Clarence A. Knight, by their solicitors, and filed in said clerk's office their demurrer to the bill in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the United States Circuit Court for the Northern District of Illinois.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY } 22269.
vs.
JOHN FEATHERSTONE *et al.*

Demurrer. Filed January 29, 1892.

The joint and several demurrer of Otto C. Butz and Clarence A. Knight, the above-named defendants, to the bill of complaint of The De La Vergne Refrigerating Machine Company, the above-named plaintiff.

These defendants, by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint contained to be true in such matter and form as the same is set forth therein and alleged, do demur to said bill, and for cause of demurrer show that the plaintiff hath not in and by its said bill made or stated such a case as entitles it in a court of equity to any discovery from these defendants or to any relief against them as to the matters contained in the said bill or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendants do demur thereto and humbly demand the judgment of this court whether they shall be compelled to
95 make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

CLARENCE A. KNIGHT,
OTTO BUTZ,
By FRANCIS LACKNER,
PAUL BROWN,
Their Solicitors.

STATE OF ILLINOIS, } *ss:*
Cook County, }

Otto C. Butz and Clarence A. Knight, the above-named defendants, being each duly sworn, on oath severally depose and state that their said demurrer is not interposed for delay.

CLARENCE A. KNIGHT.
OTTO C. BUTZ.

Subscribed and sworn to before me this 30th day of January, A. D. 1892.

[SEAL.]

JOHN H. HILL,
Notary Public.

We hereby certify that in our opinion the demurrer of Otto C. Butz and Clarence A. Knight, the above-named defendants, is well founded in point of law.

FRANCIS LACKNER,
PAUL BROWN,
Of Counsel.

(Endorsed:) Filed January 30, 1892. William H. Bradley, clerk.

96 Afterwards, to wit, on the first day of February, 1892, came John Featherstone, Arthur J. Featherstone, George Featherstone, and Jacob W. Skinkle, by their solicitors, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

United States Circuit Court, Northern District of Illinois.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE, GEORGE FEATHERSTONE, Arthur J. Featherstone, Jacob Skinkle, Clarence A. Knight, and Otto C. Butz. } In Equity.

Appearance filed February 1, 1892.

We hereby enter an appearance on behalf of John Featherstone, George Featherstone, Arthur J. Featherstone, and Jacob Skinkle, defendants in the above-entitled cause.

BOND, ADAMS & PICKARD.

Chicago, February 1, 1892.

(Endorsed:) Filed February 1, 1892. Wm. H. Bradley, clerk.

97 On the same day, to wit, on the first day of February, 1892, in the December term of said court, 1891, in the record of the proceedings thereof in said entitled cause before Honorable Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.* } In Chancery.

Order entered February 1, 1892.

Now comes the parties, by their solicitors, and now come on to be heard the demurrers of the defendants to the bill herein and the complainant's motion for a preliminary injunction as prayed for in its bill, and after hearing the arguments of counsel the court takes the same under advisement.

Afterward, to wit, on the twenty-ninth day of February, 1892, there was filed in said clerk's office the opinion of Judge Blodgett in said entitled cause; which said opinion is in the words and figures following, to wit:

Opinion.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.*

Opinion filed February 29, 1892.

BLODGETT, *J.*:

This case is now before the court on a general demurrer to the bill of complaint.

98 The matters set forth in the bill necessary to be considered on this demurrer are that before the 24th of November, 1875, one James Boyle had invented the device covered by the patent, infringement of which is charged in this case, and on the said 24th day of November he filed his application for his patent and appointed Alexander & Mason his attorneys to solicit and advocate his application.

That before applying for a patent Boyle had made a contract with one Thomas L. Rankin by which Rankin was to advance the money to secure a patent, and also to build a machine embodying the principle of the patent, for which he, Rankin, was to have an assignment of an interest in the patent when issued; that on the 27th of said month of November and before the allowance of his patent the said James Boyle died intestate, leaving a widow, Theresa M. Boyle, and four children; that on December 2, 1875, Mrs. Boyle, the widow, entered into a contract with Thomas L. Rankin whereby he agreed to complete an ice machine, which was in process of construction at the time of Mr. Boyle's death, and to press the application for a patent and in case a patent was obtained to use his best efforts to introduce the machine and share the profits with Mrs. Boyle until she should have received $5,000, when she was to assign the patent and the machines then in use to Rankin.

The making of this arrangement with Mrs. Boyle, I think, justifies this inference, that the contract alleged to have been made between Rankin and Boyle before the patent was applied for was not deemed a binding contract, else there could have been no call for the subsequent contract with Mrs. Boyle; that, under direction of Rankin, Alexander & Mason, the solicitors appointed by Boyle, prosecuted the application for a patent, and, to overcome objections made by the examiner to the said specifications and claims made by Boyle, said solicitors, on the 20th of December, 1875, amended the specifications and claims as the same had been prepared by Boyle, and thereafter and on the 21st day of March, 1876, the patent, No. 175,020, was granted unto James Boyle, his heirs or assigns, for the said invention for the period of seventeen years from the last-mentioned date; that on the 9th day of March, 1876, said Thomas L.

Rankin obtained temporary letters of administration on the estate of said James Boyle, and afterwards and about the 5th day of July, 1876, Theresa M. Boyle, the widow of said James Boyle, was appointed administratrix of the estate of said James Boyle.

99 The bill then states divers dealings with the patent by several persons and corporations, among whom are the Boyle Ice Company and the Consolidated Ice Machine Company, in which companies the defendant Skinkle was a stockholder and officer, which companies had by some instruments of writing or agreements the right to manufacture ice machines under the said patent for a term of years, but which term had elapsed before the present complainants had acquired what they called the title to said patent, and that the defendants Featherstone had manufactured ice machines in accordance with the patent under contracts with said corporations; that defendant Skinkle, while acting as an officer of the Boyle Ice Company and Consolidated Ice Machine Company, had asserted the validity of the patent in divers ways, and especially by an affidavit filed in the Patent Office.

The contention of the defendants on the demurrer is that the patent was void from the beginning, because the patentee was dead at the time the patent was granted; that there was, in fact, no grantee in the patent. It is a proposition so axiomatic and elementary as to require no citation of authority that all the rights and remedies of inventors to the exclusive property in their inventions comes from the statutes. It is the patent issued to the patentee in pursuance of the Constitution and laws of the United States which gives him the property right in his invention and protects him in the use thereof. As was said by Justice Greer in Chile *v.* Adams, I Fisher, 187: "The power of the Commissioner of Patents to issue patents and the effect of them is carefully defined by the statute. By defining the conditions under which the power it confers shall be exercised it necessarily excludes all others except, perhaps, the correction of their own clerical errors." See also Morton *v.* N. Y. Eye Infirmary, 2d Fisher, 320.

The statutes of the United States recognizes only three classes of persons to whom a patent for an invention can issue.

These are, first, the inventor himself; second, the assignor of the inventor, when the assignment is made before the issue of the patent; and, third, the executor or administrator of the inventor if the inventor dies before the patent is granted.

Rev. Stats. U. S., secs. 4886, 4895, and 4896.

"A patent for an invention is a grant by the State of the exclusive privileges of making, using, and vending and authorizing others to make, use, and vend an invention."

Kent. Com., vol. 2, p. 366.

The term "patent" is ordinarily used as descriptive of an instrument whereby some exclusive right is granted by the soverign power to the person named therein. It is the term which describes the deed or conveyance of lands from the United States or a State to

an individual. "It was the term originally used in England to describe written instruments emanating from the king sealed
100 with the great seals whereby lands, honors, or franchises were conferred upon individuals."

Bouvier Law Dic., title "Patent."

A patent for an invention, then, is a grant, and must have a grantor and grantee. It must grant the franchise or monopoly to a person named and who is capable of taking. In this respect a patent for an invention does not differ from a patent or deed for lands. "If a grant be made in *præsenti* to a person not in *esse* or not ascertained and a remainder be limited to another not in *esse*, both will be void."

3 Washburne on Real Prop., page 266.

"A deed to a person having no existence is generally inoperative and passes no title from the grantor."

5 McLean, 202.

"A deed to a person not then living and his heirs would be void, since, the word heirs being a word of limitation and not of purchase, there is no person to take under it."

3d Washburne on Real Property, 266.

In Galt *et al. v.* Galloway *et al.*, 4 Peters, 332.

McDonald Heirs *v.* Smalley, 6 Peters, 261; Galloway *v.* Findlay, 12 Peters, 264, it was held "that a patent of lands to a dead man and his heirs was void and conveyed no estate," and the same principle is affirmed in Davenport *v.* Lamb, 13 Wall., 418.

And upon the principle established in these cases I am unable to see why a patent for an invention to a dead man is not wholly inoperative.

The grant by letters patent to a man and his heirs or his heirs and assigns for an invention conveys an estate of inheritance during the existence of the rights created by the grant, but for the use of the word "heirs" in the statute and the patent the grant might be construed as wholly personal and to end with the life of the grantee. On the death of the patentee the right secured goes, not to the heirs themselves, but to the personal representatives of the deceased in trust for the heirs or devisees.

Shaw Relief Valve Company *v.* New Bedford, 19 Fed. R., 753.

Bradley *v.* Dull, *ibid.*, 913.

In other words, the grant to a living patentee is complete and operative, first, to the patentee or grantee named if living; and, second, in the event of his death during the term of the patent to his personal representatives, executors, or administrators for the use of his heirs.

In this patent there was no grantee, the person named as grantee or patentee was dead at the time of the grant, and therefore there was no person to take the thing granted, and hence the grant never took effect.

There is no hardship in this construction of the law, for by section 4996 of the Revised Statutes it is provided that if a per-
101 son who has made any new invention or discovery for which a patent may be granted shall die before a patent is granted the right of applying for and obtaining a patent shall vest in his executor or administrator in trust for his heirs, devisees, or assigns, and provides for the manner in which they shall prosecute and obtain a patent.

Under the provisions of this section it is plain that on the death of James Boyle, while the proceedings to obtain the patent were incomplete, his administrator should have suggested his death to the Patent Office and taken up the prosecution of the application and secured the issue of the patent to the administrator.

The statute by its express words provides for the administrator or executor to prosecute the application in case of the death of the inventor before the patent is granted.

The allegations in the bill, that after the death of Mr. Boyle his widow made a contract with Rankin by which he was to prosecute the application for and obtain the patent, do not, as it seems to me, help the case. Mrs. Boyle, at the time she made the alleged contract with Rankin, was not administrator of her husband's estate, and had no right to act in the premises and could not clothe Rankin with any authority to act; in fact, no one was appointed administrator until after the Patent Office had allowed the patent, and nothing remained to be done but to pay the final fee.

The authority of Alexander & Mason, the solicitors appointed by Mr. Boyle, ended with his death, and all steps taken by them after Mr. Boyle's death to procure the issue of the patent were wholly without authority from any one having any power to act in the matter.

The statute having in clear terms provided what shall be done to preserve an inventor's right to a patent in the event of his death before the patent is granted, there seems to me no escape from the conclusion that it is only by following the mode pointed out by the statute that a valid patent can be obtained in such cases.

An application pending for a patent at the time of the inventor's death seems to me quite analagous to the condition of pending suit at law on the death of the plaintiff. The suit abates at common law, as a judgment for or against a dead man would be wholly inoperative and void. It is not necessary for the purposes of this case to decide whether a new application should have been filed by the administrator, or whether the administrator could have stepped into the proceedings on suggesting the death of the applicant and been allowed to continue the proceedings in the name of the administrator. This, perhaps, would be a matter of practice for the Patent Office to decide, but to whom the patent shall issue is a matter of substance, and I am clear that after the death of the applicant the patent can only issue to an executor or administrator, as provided by statute. It is also insisted in support of the demurrer that the
102 changes made in the specifications as originally prepared and which were properly signed and verified by Boyle, so

that the patent was not granted on the specifications and claims made by Boyle, but on specifications and claims made by persons who were not his attorneys or agents, because his death revoked their agency, also vitiated the entire proceeding and rendered the patent void on the authority of Eagleton M'f'g Co. *v.* West, Ill. U. S., 499, and while there is much force in this point, yet I prefer to place my decision on the more cogent argument that the patent was void *ab initio*, because Boyle, the grantee, was dead at the time the patent was issued.

Quite a portion of the bill is taken up with allegations showing or tending to show that the defendant Skinkle has dealt with the patent at some time since its issue as a valid patent, that he has held it out to the public as valid, and that in certain proceedings instituted in the Patent Office he made affidavit as to its validity.

The bill shows that for a time Skinkle was an officer and stockholder in certain corporations engaged in the manufacture and sale of ice machines under this patent, but it also shows that whatever interest those companies had in the patent had terminated before the present complainant acquired its title.

If this patent was void from the beginning, no conduct on the part of Skinkle or those associated with him could give it validity. No rule of estoppel can be called in to aid these complainants, who by the showing of their bill did not acquire title from Skinkle or the corporations with which he is connected in dealing with this patent as against the public if it was void from the beginning.

That these are cases where parties may by dealing with a patent estop themselves from denying its validity is undoubtedly true, but none of the cases cited go to the extent of holding that any acts of an individual can vitalize and make valid a patent which never had vitality or took effect as a patent.

I do not, therefore, see that any force is added to the complainant's case by these allegations. If any person had challenged the validity of this patent in the hands of the Boyle Ice Machine Company or the Consolidated Ice Machine Company while Skinkle was a member of those companies, no acts of his supporting or alleging the validity of the patent would have been in the least material in resisting such challenge.

As to the defendants Featherstone, the only allegation of the bill is that they manufactured ice machines for the Boyle Ice Machine Company and the Consolidated Ice Machine Company while those companies considered themselves entitled by their licenses or other agreements to the use of the patent.

103 They were, at the most, mere employés of the principal infringers and cannot possibly be held to have either indorsed or validated the patent by their action in manufacturing machines such as are described in the specifications. For these reasons the demurrer is sustained and the bill dismissed for want of equity.

(Endorsed:) Filed February 29, 1882. Wm. H. Bradley, clerk.

Afterward, to wit, on the seventh day of March, in the adjourned March term of said court, 1892, in the record of the proceedings thereof in said entitled cause, before Honorable Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE, GEORGE FEATHERSTONE, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz. } In Chancery.

Decree. Entered March 7, 1892.

Now come the parties, by their solicitors, and the court, having considered and being now fully advised upon the demurrer of the defendants to the bill of complaint heretofore filed herein, sustains said demurrer and orders that said bill of complaint be dismissed at the costs of said complainant. It is thereupon considered and adjudged by the court that said defendants do have and recover of said complainant their cost herein to be taxed, and that execution issue therefor.

104 Afterward, to wit, on the fourteenth day of May, 1892, came the complainant, by his solicitors, and filed in said clerk's office his petition for appeal, and at the same time filed his assignment of errors in said entitled cause; which said petition and assignment of errors are in the words and figures following, to wit:

Petition for Appeal.

Circuit Court of the United States, Northern District of Illinois.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.* } In Equity.

Petition for appeal. Filed May 14, 1892.

And now comes said complainant, by Banning & Banning & Payson, its solicitors, and prays an appeal to the United States circuit court of appeals for the seventh circuit from the decision of this honorable court in the above-entitled cause, upon which a decree dismissing the bill of complaint herein was entered on the 7th day of March, 1892.

THE DE LA VERGNE REFRIGERATING MACHINE CO.
By BANNING & BANNING & PAYSON,
Its Solicitors.

105 *Assignment of Errors.*

Circuit Court of the United States, Northern District of Illinois.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.*
} In Equity.

Assignment of errors. Filed May, 14, 1892.

And now comes said complainant, by Banning & Banning & Payson, its solicitors, and having prayed an appeal to the United States circuit court of appeals for the seventh circuit from the decision of the circuit court of the United States for the northern district of Illinois in the above-entitled cause, and from the decree dismissing the bill of complaint entered herein, entered in pursuance of said decision on the 7th day of March, 1892, respectfully represents as grounds of appeal and as an assignment of errors herein that said circuit court erred in the following particulars:

(1.) In sustaining the defendants' demurrer to the bill of complaint herein and in dismissing said bill.

(2.) In not overruling the defendants' demurrer to the bill of complaint herein.

(3.) In holding that there was no grantee named in the complainant's patents sued on, the Boyle patent of March 21, 1876, No. 175,020, capable of taking at the time of the issuance thereof.

(4.) In not construing the word "heirs," as used in the granting clause of said patents, as meaning, designating, and including all parties beneficially interested and entitled to receive the patent as fully and to the same extent as if they had been expressly named in the grant.

106 (5.) In not holding that upon its issuance said patent inured at once and directly to the legal representatives of James Boyle, deceased, in trust to his heirs-at-law.

(6.) In not holding that upon its issuance said patent inured at once and directly to the heirs-at-law of James Boyle, deceased.

(7.) In construing the word "heirs" as used in the granting clause of said patent in the strict technical sense in which it is used in real-estate law and conveyances.

(8.) In treating said patent as real estate and subject to the strict technical rules of real-estate law.

(9.) In not treating said patent as personal property and subject to the rules of law applicable thereto.

(10.) In holding that whenever an inventor dies while his application for patent is pending in the Patent Office it is necessary for his executor or administrator to file his letters testamentary or of administration in the Patent Office in order to the issuance of a valid patent on such pending application.

(11.) In not holding that said patent is valid as against the de-

fendants Jacob W. Skinkle, John Featherstone, George Featherstone and Arthur J. Featherstone.

(12.) In not holding that the defendants Jacob W. Skinkle, John Featherstone, George Featherstone, and Arthur J. Featherstone are estopped from attacking or disputing the validity of said patent.

BANNING & BANNING & PAYSON,
Solicitors for Appellant.

(Endorsed:) Filed May 14, 1892. E. A. Drummond, clerk.

On the same day, to wit, on the fourteenth day of May, 1892, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

107

Appeal Bond.

Circuit Court of the United States, Northern District of Illinois.

DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.*
} In Equity.

Know all men by these presents that we, The De La Vergne Refrigerating Machine Company of New York City and Ephriam Banning, of Chicago, Illinois, are held and firmly bound unto John Featherstone, George Featherstone, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz in the penal sum of two hundred dollars ($200), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of May, 1892.

The condition of the above obligation is such that whereas on the 7th day of March, 1892, a final decree was entered in the above-entitled cause dismissing the bill of complaint therein and for costs of suit, from which decree The De La Vergne Refrigerating Machine Company, the above-named complainant, has prayed and been allowed an appeal to the United States circuit court of appeals for the seventh circuit:

Now, therefore, if the above-named complainant, The De La Vergne Refrigerating Machine Company, shall prosecute its said appeal to effect and without delay and shall pay said decree and all damages and costs if it shall fail to make it said appeal good, then this obligation is to be void; otherwise the same is to remain in full force and effect.

THE DE LA VERGNE REFRIGERATING MACHINE CO.,
By EPHRIAM BANNING, *Its Attorney.*
[SEAL.] EPHRIAM BANNING.

Approved.
H. W. BLODGETT, *Judge.*

(Endorsed:) Filed May 14, 1892. E. A. Drummond, clerk.

108 On the same day, to wit, on the fourteenth day of May, in the adjourned May term of said court, 1892, in the record of the proceedings thereof in said entitled cause, before Honorable Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.*
} In Chancery.

Order. Entered May 14, 1892.

Upon reading and filing the petition of the complainant for an appeal from the decree of dismissal entered herein March 7, 1892, to the United States circuit court of appeals for the seventh circuit, it is ordered that said appeal be allowed upon complainant's filing an appeal bond herein in the penal sum of two hundred dollars, with security to be approved by the court.

NORTHERN DISTRICT OF ILLINOIS, } *ss:*
Northern Division, }

Clerk's Certificate.

I, Edward A. Drummond, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein The De La Vergne Refrigerating Machine Company is complainant and John Featherstone, George Featherstone, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz are defendants, as the same appears from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office, in Chicago, in said district, this twenty-third day of May, 1892.

E. A. DRUMMOND, *Clerk.*

109 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, Northern Division, }

Citation. Filed May 25, 1892.

To John Featherstone, George Featherstone, Arthur J. Featherstone, Jacob W. Skinkle, Clarence A. Knight, and Otto C. Butz, Greeting:

You are hereby cited and admonished to appear at the United States circuit court of appeals for the seventh circuit, to be holden at Chicago on the thirteenth day of June, 1892, pursuant to an order

of appeal from the decree filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein you are defendants and The De La Vergne Refrigerating Machine Company is complainants, to show cause, if any there be, why the decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. Bunn, judge, this fourteenth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

[SEAL.]

R. BUNN,
United States District Judge.

Service of the above citation accepted this 25th day of May, 1892.

BOND, ADAMS & PICKARD,
Solicitors for Defendants.
FEATHERSTONE & SKINKLE.
OTTO C. BUTZ,
By F. LACKNER, *His Solicitor.*

110 STATE OF ILLINOIS, }
Cook County. }

Samuel E. Hebben, being duly sworn, on oath says that he served the within citation upon Clarence A. Knight by delivering a copy thereof and leaving the same with the clerk in charge of his office, in the United States Express building, Chicago, Illinois, this 25th day of May, 1892.

SAMUEL E. HEBBEN.

Subscribed and sworn to before me this 25th day of May, 1892.

ANNIE C. COURTNAY,
Notary Public.

(Endorsed:) Filed May 25, 1892. Oliver T. Morton, clerk.

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1892.

DE LA VERGNE REFRIGERATING MACHINE COMPANY
v.
JOHN FEATHERSTONE *et al.*
} *No. 52.*

The clerk will enter our appearance as counsel for the appellant.

EDMUND WETMORE.
HERBERT A. BANNING.
EPHRAIM BANNING.
THOMAS A. BANNING.
GEORGE S. PAYSON.

(Endorsed:) Filed May 25, 1892. Oliver T. Morton, clerk.

111

UNITED STATES PATENT OFFICE.

JAMES BOYLE, of Houston, Texas.

Improvement in Gas-Liquefying Pumps.

Specification forming part of Letters Patent No. 175,020, dated March 21, 1876; application filed November 24, 1875.

To all whom it may concern:

Be it known that I, James Boyle, of Houston, in the county of Harris and in the State of Texas, have invented certain new and useful improvements in gas-liquefying pump for ice-machines; and do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings and to the letters of reference marked thereon, making a part of this specification.

The nature of my invention consists in the construction and arrangement of a pump used in ice-machines for liquefying the gas, as will be hereinafter more fully set forth.

In order to enable others skilled in the art to which my invention appertains to make and use the same, I will now proceed to describe its construction and operation, referring to the annexed drawing, in which—

(Here follows diagram marked p. 112.)

Figure 1 is a longitudinal section of my invention. Fig. 2 shows one of the valves therein.

A represents the pump cylinder, provided with heads B and B′, bolted thereon in the usual manner. C is the piston or plunger, provided with the piston-rod D, which passes through the head B, and through a stuffing-box, D, thereon. G is a tube or chamber running the entire length on the outside of the cylinder, and provided with the air-inlet G^1. This air-tube communicates with the interior of the cylinder A, close to the head B, through a passage, *a*, and at the other end it communicates with one end of an air-tube, G^2, running across the head B^1 on the outer side. This air-tube G^2 is divided centrally by a cross-partition, *b*, and the other end of said tube communicates with the air-outlet G^3. The various air tubes or chambers are preferably cast with a cylinder and head, as shown in the drawing, but may be arranged in any other suitable manner. Through the air-tube or chamber G^2, on each side of the partition *b*, is screwed a cage, the upper end of which extends up into an aperture in the cylinder-head B′, and at the joint are suitable shoulders *x x*, so that when the cage is properly screwed up, the joint will be perfectly air-tight. On the upper end of the cage H is formed a seat, *d*, for the inlet-valve, I, which has a stem or rod, J, extending downward through guides *h h* within said cage, and the valve held down to its seat by a spiral spring, *i*, surrounding the

J. BOYLE.

GAS LIQUIFYING PUMP.

No. 175,020. Patented March 21, 1876.

Fig 1

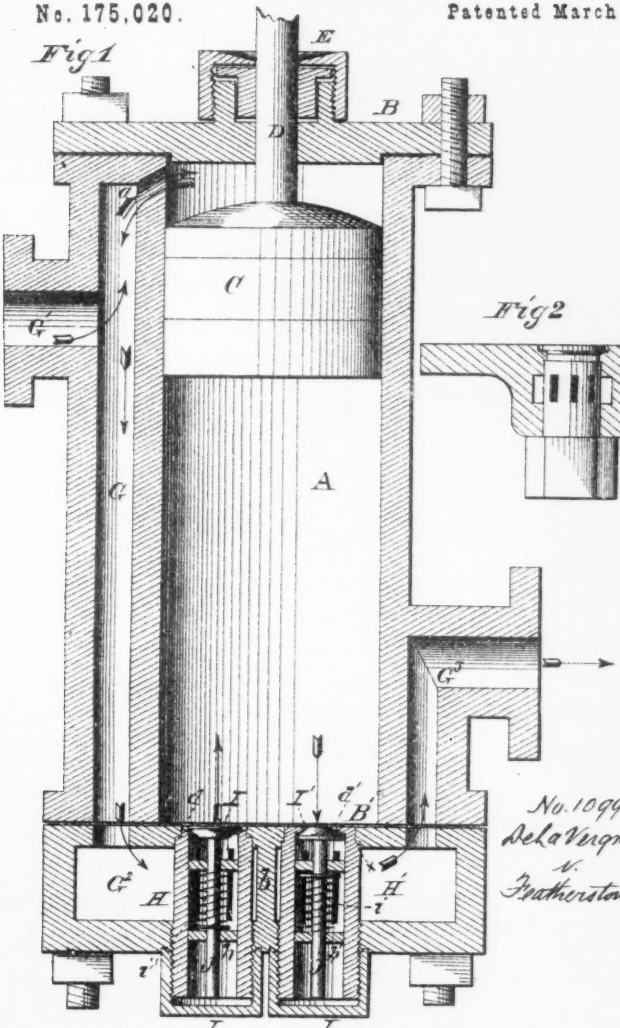
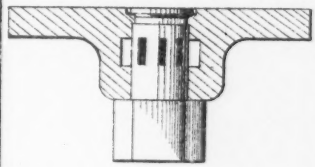


Fig 2



No. 1099 De La Vergne Co. } p. 112.
v. Featherstonehaugh

WITNESSES

Franck L. Ouland By

C. L. Ewert

INVENTOR

James Boyle

Alexander Mason

Attorneys.

stem between the guides. On the upper end of the cage H′ is formed a seat, *d*, for the outlet-valve I′. The valve-stem J′, guides *h′*, and spring *i′* are the same as in the first cage, except that the spring is arranged to hold the valve up to its seat. The lower ends of the cages H H′ are closed by means of screw-caps L, forming tight joints with the chamber G^2.

The operation of the pump is readily understood without further explanation.

Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

1. In combination with the cylinder A, and its heads B B′, the solid piston-head C, the tube G extending the entire length of the cylinder, the air-tubes G^1 G^2, air-inlet *a*, cages H H′, having valves I I′, and the outlet G^3, all constructed substantially as and for the purposes herein set forth.

2. In combination with the cylinder A and air-tube G^2, the removable cages H H′, provided with spring valves and exterior screw-threads, and exterior screw caps L L, all substantially as and for the purposes herein set forth.

In testimony that I claim the foregoing, I have hereunto set my hand this 29th day of October, A. D. 1875.

JAMES BOYLE.

Witnesses:
C. L. EVERT,
E. A. METCALF.

113 United States Circuit Court of Appeals for the Seventh Circuit.

FRIDAY, *June* 17, 1892.

Present: Hon. J. M. Harlan, associate justice U. S. S. C.; Hon. Walter A. Gresham, circuit judge, and Hon. William A. Woods, circuit judge.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY, Appellant, *vs.* JOHN FEATHERSTONE *et al.*, Appellees.	No. 52. Appeal from U. S. Circuit Court, Northern District of Illinois.

This cause having come on for final hearing, certain questions or propositions of law occurred concerning which this court, the circuit court of appeals for the seventh circuit, desires the instruction of the Supreme Court of the United States for their proper decision. These questions or propositions of law are as follows:

I.

On October 29, 1875, James Boyle, of Houston, Texas, having made an invention in refrigerating machines, executed an application for a patent therefor in due form and verified by the proper oath, and appointed Alexander & Mason his attorneys to prosecute

the same, which application was filed in the Patent Office November 24, 1875.

Thereafter and on the 27th day of November, 1875, and while said application was still pending in the Patent Office, James
114 Boyle died, leaving him surviving a widow and four children.

Thereafter the said application was prosecuted by the said attorneys under the direction of Thomas L. Rankin, who had been appointed temporary administrator of the estate of James Boyle, deceased, March 9, 1876, and who obtained the said patent and paid all the Patent Office and solicitors' fees therefor. The patent issued March 21, 1876, and the grantees therein expressed were "James Boyle, his heirs or assigns."

On these facts the instruction of the court is desired upon the question—

1. Whether the grant to James Boyle, his heirs or assigns, was void because of the death of Boyle before the patent was issued or whether such grant was valid on the ground that it should be construed in the alternative as a grant to James Boyle or his heirs or assigns, the words "heirs or assigns" including a grantee or grantees in being capable of taking the patent, and the grant enuring to his or their benefit.

II.

Prior to the aforesaid application of James Boyle for a patent he made a contract with said Thomas L. Rankin by which Rankin agreed to advance money to apply for and obtain the patent and Boyle agreed to assign to Rankin one-half interest in the invention and patent.

On December 2, 1875, after the death of James Boyle and while the application for the patent was pending in the Patent
115 Office, Rankin made an agreement with Theresa Boyle, the widow of James Boyle, then acting as executrix *de son tort*, in the words and figures following:

"HOUSTON, TEXAS, *December* 2, 1875.

Article of Agreement Between T. L. Rankin and Mrs. James Boyle.

T. L. Rankin of the first part, agrees to complete the ice machine commenced by himself and James Boyle and to provide for Mrs. Boyle while said machine is under construction until next spring, say May first, and also to press the application for patents on the part of said machine claimed by James Boyle and in case said machine is a success, and said patents are obtained, is to use his best efforts to introduce the same, and to divide with Mrs. Boyle the profits of said business until she shall have received five thousand dollars for her share; after which, Mrs. James Boyle agrees to release any further interest in said patents to be obtained and the machines then in use, and from this date, agrees that the said T. L. Rankin shall operate and control any interest James Boyle had per-

taining to ice machines, together with his interest in the Arctic Ice Company. Stock to vote, proxy of same.

T. L. RANKIN.
THERESA BOYLE.

Witness:
W. T. SCOTT."

After the grant of the patent as above stated, and on the 18th day of July, 1876, the issue of temporary letters of administration to Rankin were superseded by the appointment of the said Theresa Boyle as permanent administratrix. She thereafter filed an
116 inventory of her husband's estate, in which she included the patent in question as held and owned jointly with Thomas L. Rankin.

Neither Theresa Boyle nor her children nor Thomas L. Rankin ever repudiated the proceedings whereby said patent was obtained, but enjoyed the beneficial ownership thereof, and sold their interests therein for a valuable consideration.

On these facts the instruction of the court is desired as to the following questions:

2. Whether the above-quoted instrument should, under the above facts, be construed as an assignment to Thomas L. Rankin.

3. Whether the patent should be construed as a grant to Thomas L. Rankin as assignee.

4. Whether, under the above-recited facts, the patent should be held to be obtained by the authority of Theresa Boyle as administratrix as well as of Thomas L. Rankin.

III.

During the proceedings in the Patent Office, and after the death of James Boyle, the specification originally filed with said application for a patent was amended within the scope of the original oath and the invention described in said original specification and by way of limitation of the claims, but without the filing of any new oath or power of attorney.

5. Did such amendment render the patent void?

117 6. Is the patent void because no oath was filed after Boyle's death?

It also appearing that the cause of action below was disposed of upon a demurrer filed to appellant's bill and exhibits, which demurrer the court below sustained and dismissed the bill, and no witnesses being examined in said cause, it is further ordered that the record as printed in this cause be also certified up as a full statement of facts upon which the questions and propositions stated for the instruction desired from the Supreme Court of the United States are based, and the clerk of this court is hereby directed to transmit to the clerk of the Supreme Court of the United States a certified copy of said record, together with this certificate.

118 United States Circuit Court of Appeals for the Seventh Circuit.

I, Oliver T. Morton, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing 116 pages, numbered from 1 to 116, inclusive, contain a true copy of the printed record and of the order of court entered June 17, 1892, in the case of the De La Vergne Refrigerating Machine Co. *vs.* John Featherstone *et al.*, No. 52, October term, 1892, as the same remains upon the files and records of said United States circuit court of appeals for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 27th day of June, A. D. 1892.

Seal United States Circuit Court of Appeals, Seventh Circuit.

OLIVER T. MORTON,
Clerk of the United States Circuit Court of Appeals
for the Seventh Circuit.

Endorsed on cover: Case No. 15,069. U. S. circuit court of appeals, 7th circuit. Term No., 1099. The De La Vergne Refrigerating Machine Company, appellant, *vs.* John Featherstone *et al.* Filed June 30, 1892.

147 U 8209

The Supreme Court U. S.
FILED
OCT 5 1892
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 1,099.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY,
Appellant.

vs.

JOHN FEATHERSTONE ET AL.,
Appellees.

Certificate from U. S. Circuit Court of Appeals for the Seventh Circuit.

PETITION FOR WRIT OF CERTIORARI.

EDMUND WETMORE,
EPHRAIM BANNING,
THOMAS A. BANNING,
Counsel for Appellant.

EASTMAN BROS., LAW PRINTERS, 197 WASHINGTON ST., CHICAGO. 1892

147 U 8209

Supreme Court of the United States.

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Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 1,099.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY, *Appellant.*

vs.

JOHN FEATHERSTONE ET AL., *Appellees.*

Certificate from U. S. Circuit Court of Appeals for the Seventh Circuit.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of The De La Vergne Refrigerating Machine Company, appellant herein, respectfully shows unto your Honors, as follows:

On the 7th day of January, 1892, your petitioner filed its bill of complaint in the Circuit Court of the United States for the Northern District of Illinois, against John Featherstone and others, appellees herein, charging them with infringement of letters patent of the United States No. 175,020, issued to "James Boyle, his heirs or assigns," March 21, 1876, for an Improvement in Gas Liquefying Pumps, and praying an injunction and accounting of profits and damages against them.

In order that the court might be fully informed in reference to all material facts and circumstances, your petitioner set forth in said bill that the said James Boyle died while the application for said letters patent was pending in the Patent

Office, and before the allowance or issuance thereof, and also attached to said bill, as a part thereof, a copy of the file-wrapper and contents of said application, from which it appeared that said letters patent were issued at a date subsequent to Boyle's death, in the name of "James Boyle, his heirs or assigns," no proof of his death or of administration on his estate being filed or presented in the Patent Office; that said letters patent were issued on the original application and oath executed by Boyle, and without the filing of any new oath after his death, and that an amendment of said application, within the scope of the original description and oath, was made by the attorneys in charge of said application after Boyle's death, but without the formal execution or filing of any new power of attorney—which amendment, however, appears to have been made under the direction of Thomas L. Rankin and Theresa Boyle, hereinafter referred to as parties interested.

Said bill also set forth that, prior to the filing of said application, James Boyle made a contract with Thomas L. Rankin by which Rankin agreed to advance money to apply for and obtain a patent, and Boyle agreed to assign to Rankin a half interest in the invention and patent; and that, after Boyle's death, and while said application was pending, to wit, on December 2, 1875, Rankin made an agreement with Theresa Boyle, the widow of James Boyle, who was then acting as his executrix *de son tort*, the material part of which was as follows:

> "T. L. Rankin, of the first part, agrees to complete the ice machine commenced by himself and James Boyle, and to provide for Mrs. Boyle while said machine is under construction, until next spring, say May first, and also to press the application for patents on the part of said machine claimed by James Boyle, and in case said machine is a success, and said patents are obtained, is to use his best efforts to introduce the same, and to divide with Mrs. Boyle the profits of said business, until she shall have received five thousand

> dollars for her share; after which, Mrs. James Boyle agrees to release any further interest in said patents to be obtained and the machines then in use, and from this date agrees that the said T. L. Rankin shall operate and control any interest James Boyle had pertaining to ice machines."

Said bill also set forth that Rankin was appointed temporary administrator of the estate of James Boyle, deceased, before the issuance of said letters patent, and that, as such, he had charge, through attorneys, of said application, paid the final fee thereon, and received said letters patent; and that Mrs. Boyle was afterwards appointed permanent administratrix, and as such filed an inventory of her husband's estate, in which she included said letters patent as held and owned jointly with Rankin.

The defendants severally demurring to said bill, the cause came on for hearing in the Circuit Court before his Honor, Judge Blodgett, who, sustaining said demurrers, dismissed the bill for want of equity, the principal ground of his decision being that, Boyle having previously died, there was no grantee in being capable of taking at the time the patent was issued, and, hence, that the patent never had any validity. From this decision your petitioner prayed an appeal to the Circuit Court of Appeals for the Seventh Circuit, and when said appeal came on for argument, said Circuit Court of Appeals, Justice Harlan presiding, immediately upon hearing a statement of the principal questions or propositions of law involved, directed the same to be certified up to this court, and thereupon an order was entered certifying said questions or propositions of law to this court, as follows—the statement of facts preceding the several questions being omitted:

1. Whether the grant to James Boyle, his heirs or assigns, was void because of the death of Boyle before the patent was issued, or whether such grant was valid on the ground that it should be construed in the alternative as a

grant to James Boyle or his heirs or assigns, the words "heirs or assigns" including a grantee or grantees in being capable of taking the patent, and the grant enuring to his or their benefit?

2. Whether the above quoted instrument should, under the above facts, be construed as an assignment to Thomas L. Rankin?

3. Whether the patent should be construed as a grant to Thomas L. Rankin, as assignee?

4. Whether, under the above recited facts, the patent should be held to be obtained by the authority of Theresa Boyle, as administratrix, as well as of Thomas L. Rankin?

5. Did such amendment render the patent void?

6. Is the patent void because no oath was filed after Boyle's death?

The certificate of the Circuit Court of Appeals also directed the entire record, as printed, to be "certified up as a full statement of facts upon which the questions and propositions stated for the instruction desired from the Supreme Court of the United States are based;" and, in pursuance of this, a duly certified copy of said record has been heretofore filed, and your petitioner now refers thereto, and makes the same a part hereof.

As your petitioner is informed, a decision of some of the questions certified as above will involve a construction of Sec. 4484, Rev. Stat., and, as shown below, of several important rules frequently applied in the issuance of patents or in patent cases; and, therefore, your petitioner submits that such questions should be considered and determined in the light of all the facts and circumstances shown by the entire record.

As your petitioner is also informed, patents are always issued on the third Tuesday following the first Thursday after payment of the final fee—in other words, they are

always issued in not less than nineteen nor more than twenty-six days after payment of the final fee—so that it often happens that they are issued, as in this case, after the inventor's death, and without any knowledge thereof on the part of Patent Office officials; and, as your petitioner is informed, many patents have been heretofore issued in this way. As your petitioner is also informed, it is a common practice in the Patent Office to issue patents to representatives of deceased inventors on the specifications and oaths originally filed, and without the filing of any new petition or oath—letters testamentary or of administration only being filed—which practice was sanctioned and approved by the Commissioner's decisions in *Rice* v. *Burt*, 16 Off. Gaz., 1050, and *Ex parte Smith*, 43 Off. Gaz., 505.

As your petitioner understands, some of the questions, certified as above, involve the validity of all such patents, and are therefore of such general importance that, as now presented, they should be considered in the light of all the facts shown by the record, so that an authoritative decision, with all proper qualifications or limitations, can be pronounced.

Your petitioner further shows that, in addition to the matters above mentioned, said bill sets forth that some of said appellees, or those through whom they claim, have so acquiesced in the validity of said letters patent as to be estopped from questioning or disputing the same, particularly in that for many years they carried on large business operations thereunder, holding the same out to the public as valid as a means of inducing or controlling business, and in that one of them, after thus operating for nearly seven years, made an affidavit, for use in the Patent Office, stating, among other things, that during said period he "had no reason to suppose that said patent to the said James Boyle was invalid, and fully believed that it was good and valid, and that it had been regularly issued." Because of all these

operations and proceedings, your petitioner contends that said appellees, or some of them, are estopped from disputing or questioning the validity of said letters patent; but, as it understands, this question cannot be considered or determined by this Honorable Court on the certificate of said Circuit Court of Appeals, because it is not mentioned or referred to therein as one of the questions or propositions of law on which the instruction of this court is asked. Your petitioner, therefore, respectfully submits that this is another reason why the entire record should be certified up; so that the whole case can be considered and decided by this Honorable Court, and your petitioner saved the delay, trouble and expense of having it again argued in the Circuit Court of Appeals, in case the questions certified should be answered in such a way as to make such question of estoppel the leading or controlling question in the case.

Your petitioner, therefore, respectfully submits that, the record being short, consisting substantially of bill, demurrers and decision of the Circuit Court, and it being necessary for your Honors to consider the same in deciding the questions certified, it would be in the interests of justice, save unnecessary delay, trouble and expense to parties hereto, and result in the authoritative adjudication of questions of importance in the administration of the Patent Office, if the whole case should be so presented that it can be fully considered and decided by this Honorable Court upon and after full argument of all the questions and merits involved.

Wherefore, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding said Circuit Court of Appeals to certify and send to this court on a day certain, to be therein designated, a full and com-

plete transcript of the record and all the proceedings of the Circuit Court and Circuit Court of Appeals in said cause, to the end that said cause may be reviewed and determined by this court, as provided in Section 6 of the Act of Congress, entitled "An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891; and that your petitioner may have such other or further relief in the premises as to this Honorable Court may seem appropriate and in conformity with the said Act.

And your petitioner will ever pray, etc.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY,
By John C. De La Vergne, President.

EDMUND WETMORE,
EPHRAIM BANNING,
THOMAS A. BANNING,
Of Counsel for Petitioner.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

John C. De La Vergne, being duly sworn, upon oath says that he is president of the De La Vergne Refrigerating Machine Company, the above named petitioner; that he has read the foregoing petition subscribed by him and knows the contents thereof, and that the facts therein stated are true to the best of his knowledge, information and belief.

JOHN C. DE LA VERGNE.

Subscribed and sworn to before me this }
17th day of September, A. D. 1892. }

WILLIAM F. HIERS,
[L. S.] *Notary Public, New York County, 54.*

147 U.S. 209

Office Supreme Court U. S.
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OCT 10 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 1,099.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY,
Appellant.
vs.
JOHN FEATHERSTONE ET AL.,
Appellees.

Certificate from U. S. Circuit Court of Appeals for the Seventh Circuit.

MOTION TO ADVANCE.

EDMUND WETMORE,
EPHRAIM BANNING,
THOMAS A. BANNING,
Counsel for Appellant.

EASTMAN BROS., LAW PRINTERS, 197 WASHINGTON ST., CHICAGO. 1892

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 1,099.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY, *Appellant.*

vs.

JOHN FEATHERSTONE ET AL., *Appellees.*

Certificate from U. S. Circuit Court of Appeals for the Seventh Circuit.

MOTION TO ADVANCE.

And now comes said appellant, by Edmund Wetmore, Ephraim Banning and Thomas A. Banning, its counsel, and moves the court to advance the above entitled cause and assign the same for hearing at an early day, because of the matters of general public interest involved, and of the special and peculiar circumstances now shown to the court, as follows:

The cause is now before the court on a certificate from the Circuit Court of Appeals for the Seventh Circuit asking instructions on six questions or propositions of law. The first question certified is:

> "Whether the grant to James Boyle, his heirs or assigns, was void because of the death of Boyle before the patent was issued, or whether such grant was valid on the ground that it should be construed, in the alternative, as a grant to James Boyle or his heirs or assigns, the words 'heirs or assigns' including a grantee

or grantees in being capable of taking the patent, and the grant enuring to his or their benefit?"

This question is based upon the fact that the patent sued on was issued after the inventor, James Boyle, had died, the application therefor having been executed and filed in the Patent Office during his lifetime. The grant is in the form prescribed by Section 4884, Rev. Stat., but the inventor having previously died, the question is presented whether this form was applicable. In the Circuit Court, Judge Blodgett dismissed the bill for want of equity, the principal ground of his decision being that, Boyle having previously died, there was no grantee in being capable of taking at the time the patent was issued, and hence that the patent never had any validity. In opposition to this view, appellant contends that, as used in the grant, the words "heirs or assigns" are broad enough to include Boyle's legal representatives, heirs at law and assigns, and, hence, that there was a grantee in being capable of taking at the time the patent was issued.

This question, whether a patent issued in this form is absolutely void where the inventor has previously died, but his death is unknown to or unnoticed by the Patent Office, is one of general importance and public interest. Under the present practice of the Office, patents are always issued on the third Tuesday following the first Thursday after payment of the final fee. In other words, they are always issued in not less than nineteen nor more than twenty-six days after payment of the final fee—so that it often happens that they are issued, as in this case, after the inventor's death, but without any knowledge thereof on the part of Patent Office officials; and, as a matter of fact, many patents have been heretofore issued in this way. The first question certified involves the validity of all such patents. If the Circuit Court's decision is right, then all such patents are void, and the practice of the Office should

be immediately changed, and, if necessary, legislation should be had to prevent further irregularities or hardship.

Passing the second, third, fourth and fifth questions certified as more or less limited by special facts, the sixth question is:

> "Is the patent void because no oath was filed after Boyle's death?"

Like the first, this sixth question is one of general importance and public interest. It is a common practice in the Patent Office to issue patents to representatives of deceased inventors on the specifications and oaths originally filed, and without the filing of any new petition or oath—letters testamentary or of administration only being filed—which practice was sanctioned and approved by the Commissioner's decisions in *Rice* v. *Burt*, 16 Off. Gaz., 550, and *ex parte Smith*, 43 Off. Gaz., 505. If this practice is unauthorized, all such patents are void, and, therefore, it is a matter of general public interest that the proper practice in this respect should be settled at the earliest date possible, so that, if necessary, legislation may be had to either authorize or change it.

Appellant, therefore, respectfully submits that the first and sixth questions presented involve matters of such general importance and public interest as to call for an advancement of the cause, so that the same may be speedily heard and decided, and humbly prays that the cause may be advanced and assigned for hearing at such early day as may suit the court's convenience.

EDMUND WETMORE,
EPHRAIM BANNING,
THOMAS A. BANNING,
Counsel for Appellant.

Chicago, October, 1892.

147 U.S. 209

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CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY, appellant,
vs.
JOHN FEATHERSTONE ET AL. } No. 1099.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY, appellant,
vs.
JOHN FEATHERSTONE ET AL. } No. 1099.

MOTION TO ADVANCE.

And now, October 11, 1892, comes the Solicitor-General, on behalf of the United States, and moves the court to advance upon the docket, and set down for an early hearing, the above-entitled case.

A statement of the questions involved in this case, and of their importance to the Government in the administration of the Patent Office, is given in the motion to advance filed by the appellant herein.

Appended hereto are letters from the Acting Secretary of the Interior and the Commissioner of Patents in relation to this case.

CHARLES H. ALDRICH,
Solicitor-General.

DEPARTMENT OF THE INTERIOR,
Washington, September 28, 1892.

SIR: I have the honor to transmit herewith a copy of a letter from the Commissioner of Patents, in which he

requests that in view of the importance of the question involved and the general interest to his office in the case entitled *The De La Vergne Refrigerating Machine Company* vs. *John Featherstone et al.*, pending in the Supreme Court of the United States on appeal from the United States circuit court for the northern district of Illinois, that it may be advanced for hearing, and have to request that, if practicable, such steps may be taken as will secure compliance with his wishes in the matter.

Very respectfully,

GEO. CHANDLER,
Secretary.

The ATTORNEY-GENERAL.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
Washington, September 21, 1892.

SIR: In view of the importance of the questions involved and the general interest to this office, I have the honor to request that you recommend to the Department of Justice that the case entitled *The De La Vergne Refrigerating Machine Company* vs. *John Featherstone et al.*, pending in the Supreme Court of the United States on appeal from the United States circuit court for the northern district of Illinois, may be advanced for hearing.

Very respectfully, your obedient servant,

W. E. SIMONDS,
Commissioner.

The SECRETARY OF THE INTERIOR.

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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 1,099.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY,
Appellant,
vs.
JOHN FEATHERSTONE ET AL.,
Appellees.

Certificate from U. S. Circuit Court of Appeals for the Seventh Circuit.

BRIEF OF ARGUMENT FOR APPELLANT.

BANNING & BANNING & PAYSON,
Solicitors for Appellant.

EDMUND WETMORE,
HUBERT A. BANNING,
Of Counsel.

EASTMAN BROS., LAW PRINTERS, 167 WASHINGTON ST., CHICAGO. 1892

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 1,099.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY,
Appellant,
vs.
JOHN FEATHERSTONE ET AL.,
Appellees.

Certificate from U. S. Circuit Court of Appeals for the Seventh Circuit.

BRIEF OF ARGUMENT FOR APPELLANT.

I.

STATEMENT OF CASE.

This is a bill in equity filed by appellant, complainant in the court below, charging appellees, defendants in the court below, with infringement of letters patent of the United States No. 175,020, issued to "James Boyle, his heirs or as-

signs," March 21, 1876, for an Improvement in Gas Liquefying Pumps.

As the case merely involves law questions, any extended explanation of the invention is considered unnecessary. It may be stated, however, that the gas liquefying pump of the Boyle patent, which is generally called a "compressor," forms the principal part of the Boyle ice machine, manufactured for many years by the Boyle Ice Machine Company and the Consolidated Ice Machine Company of Chicago. In its essential features, this machine consists of (1) a *compressor*, (2) a *condensor*, (3) an *expansion coil*, and (4) an engine or *motive power* for setting the machine in operation. The compressor is really the heart of the machine, which, by its continual beating, causes a regular, uniform circulation throughout the entire system.

The bill alleges that the Boyle patent has been recognized as valid by the interested public, including appellees,* from the time of its issuance until very recently. It formed the basis of large operations by appellees, or their predecessors, and in the strongest ways possible was held out to the public and acted upon as valid until after the failure of the Consolidated Ice Machine Company, which occurred in October, 1890. In short, the patent was recognized and acted upon as valid by appellees or their predecessors for about fourteen and a half years, and until, owing to change in circumstances, they considered it for their interests to turn about and take an opposite position.

Although appellees or their predecessors operated under an asserted ownership of the patent, still they were only

* Knight and Butz being nominal parties, references to "appellees" should generally be understood as meaning Jacob W. Skinkle, John Featherstone, George Featherstone and Arthur J. Featherstone.

licensees—practically exclusive licensees—and, after their rights expired, the title became vested in appellant in pursuance of a previous defeasible assignment given as security for money loaned (34–35), confirmatory assignments being afterwards obtained from all parties interested.

The license under which operations were previously carried on expired in the latter part of 1889, and no one, except appellant, has had authority to manufacture under the Boyle patent since that time; but, notwithstanding this, appellees Featherstone, who previously manufactured for the Consolidated Company, have been manufacturing and selling ice machines containing the Boyle compressor, and are now arranging to organize a new company—a contract in which appellees Knight and Butz are trustees having been heretofore executed—for this purpose.

In anticipation of any point as to regularity of proceedings in the Patent Office, the bill sets forth a full history of such proceedings, from which it appears, among other things, that shortly after filing his application for said patent, James Boyle died, and that thereafter his administrator, who was also assignee of a half interest, prosecuted the application, paid the final fee, and took out the patent, the patent being issued in the name of "James Boyle, his heirs or assigns."

On the theory that the patent was irregularly issued, owing to the previous death of James Boyle, appellees demurred generally to the bill, and the case was argued before his Honor Judge Blodgett on the first day of February, 1892. After being held under advisement for some time, a decision was announced sustaining appellees' demurrers on the ground that, Boyle having previously died, there was no grantee in being capable of taking at the time the patent was issued, and hence that the patent never had any valid-

ity. Judge Blodgett's opinion is printed in the record at pages 72–77, and reported in 49 Fed. Rep., 916.

In pursuance of his decision, a decree was entered March 7, 1892, dismissing the bill for want of equity. To reverse this decree complainant appealed to the Circuit Court of Appeals for the Seventh Circuit, which court, when the cause was reached for hearing, entered an order certifying certain questions to this court, as follows:

II.

CERTIFICATE OF CIRCUIT COURT OF APPEALS.

"This cause having come on for final hearing, certain questions or propositions of law occurred concerning which this court, the Circuit Court of Appeals for the Seventh Circuit, desires the instruction of the Supreme Court of the United States for their proper decision. These questions or propositions of law are as follows:

I.

"On October 29, 1875, James Boyle, of Houston, Texas, having made an invention in refrigerating machines, executed an application for a patent therefor in due form and verified by the proper oath, and appointed Alexander & Mason his attorneys to prosecute the same, which application was filed in the Patent Office November 24, 1875.

"Thereafter, and on the 27th day of November, 1875, and while said application was still pending in the Patent Office, James Boyle died, leaving him surviving a widow and four children.

"Thereafter the said application was prosecuted by the said attorneys under the direction of Thomas L. Rankin, who had been appointed temporary administrator of the estate of James Boyle, deceased, March 9, 1876, and who obtained the said patent and paid all the Patent Office and solicitors' fees therefor. The patent

issued March 21, 1876, and the grantees therein expressed were 'James Boyle, his heirs or assigns.'

"On these facts the instruction of the court is desired upon the question—

"1. Whether the grant to James Boyle, his heirs or assigns, was void because of the death of Boyle before the patent was issued, or whether such grant was valid on the ground that it should be construed in the alternative as a grant to James Boyle, or his heirs or assigns, the words 'heirs or assigns' including a grantee or grantees in being capable of taking the patent, and the grant enuring to his or their benefit.

II.

"Prior to the aforesaid application of James Boyle for a patent, he made a contract with said Thomas L. Rankin by which Rankin agreed to advance money to apply for and obtain the patent, and Boyle agreed to assign to Rankin one-half interest in the invention and patent.

"On December 2, 1875, after the death of James Boyle, and while the application for the patent was pending in the Patent Office, Rankin made an agreement with Theresa Boyle, the widow of James Boyle, then acting as executrix *de son tort*, in the words and figures following:

"'HOUSTON, TEXAS, December 2, 1875.

"'*Article of Agreement between T. L. Rankin and Mrs. James Boyle.*

"'T. L. Rankin, of the first part, agrees to complete the ice machine commenced by himself and James Boyle and to provide for Mrs. Boyle while said machine is under construction, until next spring, say May first, and also to press the application for patents on the part of said machine claimed by James Boyle, and, in case said machine is a success, and said patents are obtained, is to use his best efforts to introduce the same, and to divide with Mrs. Boyle the profits of said business until she shall have received five thousand dollars for her share; after which, Mrs. James Boyle agrees to release any further interest in said patents to be obtained and the machines then in use, and, from this

date, agrees that the said T. L. Rankin shall operate and control any interest James Boyle had pertaining to ice machines, together with his interest in the Arctic Ice Company. Stock to vote, proxy of same.

"'T. L. RANKIN,

"'Witness: "'THERESA BOYLE.

"'W. T. SCOTT.'

"After the grant of the patent as above stated, and on the 18th day of July, 1876, the issue of temporary letters of administration to Rankin were superseded by the appointment of the said Theresa Boyle as permanent administratrix. She thereafter filed an inventory of her husband's estate, in which she included the patent in question as held and owned jointly with Thomas L. Rankin.

"Neither Theresa Boyle nor her children nor Thomas L. Rankin ever repudiated the proceedings whereby said patent was obtained, but enjoyed the beneficial ownership thereof, and sold their interests therein for a valuable consideration.

"On these facts the instruction of the court is desired as to the following questions:

"2. Whether the above quoted instrument should, under the above facts, be construed as an assignment to Thomas L. Rankin?

"3. Whether the patent should be construed as a grant to Thomas L. Rankin as assignee?

"4. Whether, under the above recited facts, the patent should be held to be obtained by the authority of Theresa Boyle as administratrix, as well as of Thomas L. Rankin?

III.

"During the proceedings in the Patent Office, and after the death of James Boyle, the specification originally filed with said application for a patent was amended within the scope of the original oath and the invention described in said original specification and by way of limitation of the claims, but without the filing of any new oath or power of attorney.

"5. Did such amendment render the patent void?

"6. Is the patent void because no oath was filed after Boyle's death?

"It also appearing that the cause of action below was disposed of upon a demurrer filed to appellant's bill and exhibits, which demurrer the court below sustained and dismissed the bill, and no witnesses being examined in said cause, it is further ordered that the record as printed in this cause be also certified up as a full statement of facts upon which the questions and propositions stated for the instruction desired from the Supreme Court of the United States are based, and the clerk of this court is hereby directed to transmit to the clerk of the Supreme Court of the United States a certified copy of said record, together with this certificate."

III.

APPELLEES' POSITION WITH REFERENCE TO BOYLE PATENT.

Before proceeding to consider the questions certified, it will be proper to explain appellees' position with reference to the Boyle patent, and to suggest that in view of their position all doubts, if there be any, should be resolved in appellant's favor, and the patent, being at most merely voidable, now enforced.

The Boyle Ice Machine Company and the Consolidated Ice Machine Company, one following the other, were engaged in manufacturing and selling ice machines, containing the patented compressors, continuously for a period of more than eleven years from the latter part of 1878—the Boyle Ice Machine Company for more than five years, and afterwards, the Consolidated Company for more than six years. During all this time Mr. Skinkle, one of the appellees, was president of said companies, respectively, and very largely interested therein.

Appellees Featherstone were engaged in building ice machines for the Consolidated Company under the Boyle patent for several years prior to its failure—ever since 1885—so that although not nominally members of the company, they were closely associated with it, and in effect a party to its operations. In short, the Boyle patent formed the basis of large operations by corporations in which appellees were interested, directly or indirectly, which corporations for many years held the patent out to the public as valid in such a way as to control the business of manufacturing and selling ice machines containing the patented compressors.

It is true that appellees Featherstone were not members of the Consolidated Company, but, as above stated, they were closely associated with it, and in effect a party to its operations. As manufacturers for it, they shared in the benefits derived from its assertions that the patent was valid, which assertions were intended to intimidate, and did intimidate, competing manufacturers to such an extent that it was able, as was the Boyle Company before it, to control the exclusive manufacture and sale of ice machines containing the patented compressors, during all the time it was in business. Even now, as the bill alleges and demurrers admit, they have "become possessed of the original drawings and patterns for machines of the style previously manufactured by the said The Consolidated Ice Machine Company, and particularly the original drawings and patterns for the said Boyle compressor part of the machine, and have recently, to wit, in the month of November, commenced to advertise that since the original company have failed they have concluded to continue this business, and will hereafter manufacture any kind or style of consolidated ice machine desired, meaning thereby machines of the Boyle pattern" (18). Operating with the Consolidated Company, sharing

in the benefits derived from its advertisements and assertions under the patent, and even now seeking to retain the good will of its business, appellees Featherstone ought, especially in a court of equity, to be considered as standing in the same position.

In legal proceedings also the validity of the patent was strongly asserted. In 1885 proceedings were had in the Patent Office in a sense involving the principal question here presented—whether, owing to the previous death of James Boyle, the patent was regularly issued. In these proceedings Mr. Skinkle made an affidavit (52–53), in which he referred to previous infringement suits under the Boyle patent, and stated that, as president of the Boyle Ice Machine Company, he had had occasion, in connection with such suits, to make himself "familiar with many matters relating to or connected with the matter in controversy." In this affidavit, made August 31, 1885, by direction of his present counsel, after he had been manufacturing under the patent for seven years, and at a time when it must be presumed from his own statements that he was entirely "familiar" with all of the facts, Mr. Skinkle says:

> "I am, and, ever since its organization, have been president of the Boyle Ice Machine Company, a corporation organized under the laws of the State of Illinois, in December, 1878. . . . So far as I know and believe, all parties interested in the organization of such company fully believed that the title of the said Mrs. Bushnell to the said patent was valid and perfect, and the privilege of using such patent, *which was then supposed to be valid** was one consideration for the investment of capital in the business of the corporation. The said corporation has manufactured and sold a large

*The italics and small caps are ours; and whenever they occur in this brief, such letters may be considered as ours, unless otherwise stated.

number of ice and refrigerating machines containing compression pumps substantially like that shown and described in said patent to said James Boyle, which machines were put into use in many places throughout the United States, both North and South. Such manufacture and sale was commenced soon after the organization of the company, and was continued for more than five years. . . .

"During the time that the Boyle Ice Machine Company was manufacturing and selling ice and refrigerating machines, I had no reason to suppose that the said patent to the said James Boyle was invalid, and *fully believed that it was good and valid*, and that it had been REGULARLY ISSUED."

It thus appears from this affidavit, made under the direction of appellees' present counsel, that Mr. Skinkle and his associates fully believed the Boyle patent to be valid during the five years the Boyle Ice Machine Company was operating under it; and that, afterwards, and at a time when he himself says he was familiar with the early history of the patent, Mr. Skinkle still "fully believed that it was good and valid, and that it had been REGULARLY ISSUED."

In view of all these operations and assertions of title, it is believed that appellees are, in equity, as fully and completely estopped from attacking the validity of the Boyle patent as if they had personally been patentees therein. It is true they did not make the application and oath on which the patent was issued, but one of them has since made an oath asserting its validity, and all of them, or those through whom they derived title, have held it out as valid, and thus controlled the trade by preventing others from manufacturing the patented compressors. In a word, they all treated the patent as valid, and to a greater or less extent derived exactly the same benefits as if they had personally been patentees therein. In this view, the case seems to fall within

the rule that anyone operating under a patent is estopped from disputing its validity. See

Robinson on Patents, § 984.
Walker on Patents, § 469.
Consolidated M. P. Co. v. *Guilder*, 9 Fed. Rep., 155.
Time Telegraph Co. v. *Himmer*, 19 Fed. Rep., 322.
Rumsey v. *Buck*, 20 Fed. Rep., 697.
Underwood v. *Warren*, 21 Fed. Rep., 573.
Parker v. *McKee*, 24 Fed. Rep., 808.
Hobbie v. *Smith*, 27 Fed. Rep., 656.
Am. Paper Barrel Co. v. *Laraway*, 28 Fed. Rep., 141.
Burr v. *Kimbark*, 28 Fed. Rep., 574.
Burdsall v. *Curran*, 31 Fed. Rep., 918.

The rule deducible from these authorities is thus stated and applied by Judge Blodgett in the Burdsall-Curran case: "There can be no question, under the authorities, that Curran [the patentee] would be estopped from denying the validity of the original patent." And Robinson well says that "the defendant is bound by his prior conduct equally with the plaintiff, and is not permitted to assume positions inconsistent with those he has previously occupied and on which the plaintiff has relied in the direction of his affairs."

It is also to be noted that during all the time appellees were operating under the patent other manufacturers acknowledged and acquiesced in its validity and in appellees' rights thereunder—appellant and others standing at a respectful distance and keeping hands off. The only infringement ever committed is the one here in controversy, and this one has been committed by parties who for many years sustained the closest relations to operations under the pat-

ent, enjoying its exclusive privileges and receiving large profits therefrom.

Under all these circumstances, we respectfully submit that, if possible, the patent should be treated as valid as against appellees; otherwise, what will be the effect, in law or morals, if a court of last resort should say that parties operating under a patent for many years—receiving large profits to themselves and preventing others from receiving anything—may afterwards turn around and repudiate the good faith of their own conduct? Will it be to encourage honesty and fair dealing, and to render patent property stable, or the opposite?

IV.

FORM OF GRANT.

The first question certified is:

> "Whether the grant to James Boyle, his heirs or assigns, was void because of the death of Boyle before the patent was issued, or whether such grant was valid on the ground that it should be construed in the alternative as a grant to James Boyle or his heirs or assigns, the words 'heirs or assigns' including a grantee or grantees in being capable of taking the patent, and the grant enuring to his or their benefit?"

Notwithstanding general and specific acquiescence for nearly fourteen years, from which appellees, or their predecessors, derived large benefits, it is now claimed that the patent is invalid because of a supposed irregularity in its issuance. As already stated, the record shows that shortly after filing his application, James Boyle died, and that thereafter his administrator, who was also assignee of a half interest, prosecuted his application, paid the final fee, and took out the patent; but the administrator, failing to file a new application or proof of administration, the patent was issued in the name of "James Boyle, his heirs or assigns."

The history of proceedings in the Patent Office is set forth in the bill (3–5) in anticipation of any point as to irregularity, as follows:

> "Your orator, on information and belief, alleges that prior to the 29th day of October, 1875, one James Boyle was the first, sole and original inventor of certain new and useful Improvements in Gas Liquefying Pumps; and prior to said date was engaged with one Thomas L. Rankin in the development of said improvements, and in an undertaking to build ice-making and refrigerating machines, which would embody the same, and utilize the benefits and advantages thereof; that in

pursuance of this purpose, a contract was entered into, prior to said date, in and by which the said Rankin agreed to advance money to apply for and obtain a patent on said invention, and to build a machine embodying the same, and in consideration thereof the said Boyle agreed to assign to said Rankin a half interest in and to said invention and patent; that the said improvements so invented by the said James Boyle, as aforesaid, were not known or used by others and had not been patented or described in any printed publication in the United States, or any foreign country, prior to his invention thereof, and had not been in public use or on sale in the United States for more than two years prior to the making and filing by the said James Boyle of an application for a patent therefor in due form of law, as your orator verily believes.

"Your orator, on information and belief, further alleges that on or about said 29th day of October, 1875, the said James Boyle duly executed the necessary papers for an application for letters patent of the United States for said improvements, and in his petition therefor did pray that Alexander & Mason, of Washington, D. C., be recognized as his sole lawful solicitors and advocates for him and in his name to solicit and advocate, amend his application, to receive the patent if granted, and in all other respects to do all the petitioner, said James Boyle, could do if acting in the premises; that thereafter, and on or about the 24th day of November, 1875, the said application papers were filed in the United States Patent Office for a patent for the aforesaid improvements, the expenses pertaining to the same being paid by said Thomas L. Rankin.

"Your orator, on information and belief, further alleges that on or about the 27th day of November, 1875, after the filing of said application in the United States Patent Office, and before the allowance of a patent thereon, the said James Boyle died, leaving him surviving a widow, Theresa M. Boyle, and four children; that thereafter and on or about the 2d day of December, 1875, the said Theresa M. Boyle, who was then acting as executrix *de son tort* of the said James Boyle, deceased, and as guardian by nature of said children, entered into an agreement with the said Thomas L. Rankin, wherein and whereby the said

Rankin agreed to build the ice machine commenced by himself and said James Boyle and to provide for said widow while said machine was under construction; and also agreed to press the applications for patents on the part of said machine claimed by said Boyle, and in case said machine was a success and said patents were obtained, said Rankin was to use his best efforts to introduce the same, and to divide with the said Theresa M. Boyle the profits of said business until she should have received five thousand dollars for her share, after which she agreed to release and assign to said Rankin any further interests in said patents to be obtained and the machine then in use, as by reference to a certified copy of the record of said agreement in the United States Patent Office, which is hereunto annexed, as a part of this bill, and marked 'Exhibit C,' will more fully and at large appear.

"Your orator, on information and belief, further alleges that the said Thomas L. Rankin being then interested in the construction of the said machine, and in the aforesaid application of said James Boyle for a patent on said improvements, did thereupon and thereafter proceed to carry out his part of the said agreement to the extent of providing for the said widow and her children until the following May, and did also complete the said machine at his own expense, and did assume the responsibility for the Patent Office and solicitor's fees in the further prosecution of the said application, being in communication with the said Alexander & Mason, who continued to act in the premises under his direction as they had heretofore done, as well as under the authority of said Theresa M. Boyle, then vested in him. That said application was diligently prosecuted by said solicitors under the direction of said Rankin, as aforesaid, and said application was acted upon by the Examiner in charge thereof, on the 15th day of December, 1875, said Examiner making certain objections affecting the scope of the specification and claims in the form in which the same had been executed by the said James Boyle and subsequently filed in the Patent Office as aforesaid; that thereafter, and on, to wit, December 20, 1875, said Alexander & Mason, acting as such solicitors, and under the authority of said Rankin and Theresa M. Boyle as aforesaid, did overcome the objections thereto, and cure

such defects by a proper amendment, and shortly thereafter, to wit, January 4, 1876, said application was allowed; that on or about March 9, 1876, said Thomas L. Rankin was appointed temporary administrator of the estate of said James Boyle, deceased, and thereafter, to wit, March 18, 1876, paid the final goverment fee of $20 on said application and the balance due said solicitors for their services, and a patent was thereon issued, bearing date March 21, 1876, and numbered 175,020, wherein and whereby there was granted unto the said James Boyle, his heirs or assigns, for the term of seventeen years from said 21st day of March, 1876, the exclusive right to make, use and vend the said invention throughout the United States and the territories thereof, as by reference to a certified copy of said letters patent hereunto annexed as a part of this bill, and marked 'Exhibit D,' and a certified copy of the file wrapper and contents of the application on which the same were issued, also hereunto annexed as a part of this bill, will more fully and at large appear."

As already stated, appellees' contention is that notwithstanding these circumstances, and their long acquiescence and large operations under the patent, there was such irregularity in its issuance in the name of "James Boyle, his heirs or assigns," as to render it invalid.

Not to speak harshly, this question comes with bad grace from parties who have operated under the patent for more than eleven years, holding it out to be valid in the strongest ways possible, and inducing the public to pay money in faith of its validity; and this, too, with full knowledge of the fact that James Boyle died before issuance of the patent, and in face of the statement, made by one of them under oath, that after operating under the patent for nearly seven years, and after becoming "familiar" with everything pertaining to it, he "*had no reason to suppose that the said patent* to the said James Boyle *was invalid*, and *fully believed that it was good and valid*, and that it had been REGULARLY ISSUED."

But, without special regard to this, there is another view

in which it is questionable whether appellees should be now allowed to dispute the validity of the Boyle patent, which will be apparent from the following quotation from Judge Blodgett's opinion in *Whitcomb* v. *Spring Valley Co.*, 47 Fed. Rep., 652, 658:

> "I do not see that any one but Jonathan W. Harrison could be heard to complain as to these reissues to his wife as his guardian, and the proof shows that he has recovered his reason and has been managing his own affairs since 1884, but there is no proof that he has at any time repudiated the action of the Patent Office in making this reissue to his wife and guardian."

In this case there is no proof that James Boyle's executors, administrators, heirs or assigns, or any one ever interested in the patent, "has at any time repudiated the action of the Patent Office in making this grant in the name of "James Boyle, his heirs or assigns." On the contrary, all the parties in interest have from the very first, and in many ways, treated the patent as valid, and thus acquiesced in the grant. Under these circumstances, why does not the statement "I do not see that any one but Jonathan W. Harrison could be heard to complain" have a direct bearing as to appellees' position? The interests of the public, including appellees, have been in no wise injuriously affected by the form of the grant, which, in the above view, should be treated as simply a matter between the government and parties interested in the patent.

If it should be considered necessary, however, to examine into the question of validity at all, then we respectfully submit the following considerations as to the form of grant, our position being that, in every sense, the patent was legally and properly issued.

1. *Statutory Provisions.* On both reason and principle, appellant submits that, notwithstanding his death, the patent was properly issued in the name of "James Boyle, his heirs or assigns."

Under the circumstances and in the light of suggestions to be presently made, the court should hesitate to adopt a construction which will result in the destruction of many patents similarly situated, and, generally, in great public inconvenience. A liberal rule should be applied, but even on a strict interpretation this construction seems unnecessary.

Sec. 4884, Rev. Stat., provides that:

> "Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years," etc.

The Boyle patent was granted in strict conformity with this provision. The opening part of its granting clause is in these words:

> "Now, therefore, these letters patent are to grant unto the said James Boyle, his heirs or assigns, for the term of seventeen years," etc. (29)

Sec. 4896, Rev. Stat., provides:

> "When any person, having made any new invention or discovery for which a patent might have been granted, dies before a patent is granted, the right of applying for and obtaining the patent shall devolve on his executor or administrator, in trust for the heirs at law of the deceased, in case he shall have died intestate; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his life-time; and when the application is made by such legal representatives, the oath or affirmation required to be made shall be so varied in form that it can be made by them."

Rule 2 of the Rules of Practice of the Patent Office, in force at the time the Boyle patent was issued, provided that:

> "In case of the death of the inventor, the patent may be applied for by, and will issue to, his executor or administrator."

As the statute simply gives the executor or administrator

"the right of *applying for* and *obtaining* the patent," and says nothing about an application filed by an inventor before his death, it has been supposed that it was not applicable to a case like the one now before the court. That this was the general understanding at the time the Boyle patent was issued is shown by the fact that, even as late as 1885, the learned counsel who now represent appellees had Mr. Skinkle execute an affidavit asserting its validity. But in *Rice* v. *Burt*, 16 Off. Gaz., 1050, Commissioner Paine said:

> "I think that Congress undertook to provide for two classes of cases, one in which the applications should be, and the other in which they should not be filed before the death of the inventor; and that, however awkwardly the legislative will may have been expressed, the meaning was that 'the right of applying for the patent should devolve on the executor or administrator,' as well as the right of obtaining it in case the death of the inventor should occur before the application was filed, and that 'the right to obtain it' should devolve on the executor or administrator if the inventor should die after the application was filed. Rule 2 seems to have the same meaning."

In this case the Commissioner held that, although a new application might be filed, it was "not necessary in a case like this"—where an inventor had died after filing his application; and in *ex parte Smith*, 43 Off. Gaz., 505, Commissioner Hall took the same view, saying:

> "It seems to be a well settled practice in the Office that when a decedent has filed his application and his death has occurred before the patent issues, the executor may appear, file his letters of administration or executorship, and proceed with the case without filing a new application and paying a new fee. In such case, of course, the application retains its original status in the Office, and is disposed of precisely as if the applicant had not died; but the statutes, the rule and the practice recognize the other method of continuing the application—that is, of filing a new original application for the same invention and in continuation of the original application."

If an inventor dies before making his application for a patent, the application should be made by his executor or administrator, this being necessary in order that the fundamental requirements of the statute in reference to the granting of patents may be fulfilled as far as the same can be fulfilled after the inventor's death. The application by the executor or administrator, however, is only allowed *because* the inventor has not made it. The inventor is the person best qualified to draw and sign the specification and make oath thereto, because he best knows what he has invented. Where he has already done this, there is no reason for substituting a secondary and inferior application and oath of an administrator. The right of "obtaining" the patent, then, in this case devolved on the administrator of James Boyle, in trust for his heirs at law, but in exercising the right of obtaining the patent it was not necessary to make a new application or oath.

It is apparent, however, that Sec. 4896 was not intended to provide for proceedings applicable to every possible contingency in cases of death. As Commissioner Hall explains, a practice has grown up in the Office of permitting an administrator or executor to "appear, file his letters of administration or executorship, and proceed with the case without filing a new application." Although it is not specifically mentioned or provided for in the statute, this practice is now very common. If an administrator can thus come in and make proof of his title before issuance of a patent, why can he not also come in and make proof after issuance, and this without special regard to the time of the inventor's death? And if one practice not specifically provided for in the statute is permissible as a mere matter of convenience, why are not others equally permissible for the protection of substantial rights, especially when made necessary by circumstances beyond human control?

The only other provision of the statute which has any material bearing on the form of grant is found in Sec. 4895, which is as follows:

> "Patents may be granted and issued or reissued to the assignee of the inventor or discoverer; but the assignment must first be entered of record in the Patent Office. And in all cases of an application by an assignee for the issue of a patent, the application shall be made and the specification sworn to by the inventor or discoverer; and in all cases of an application for a reissue of any patent, the application must be made and a corrected specification signed by the inventor or discoverer if he is living, unless the patent was issued and the assignment made before the eighth day of July, eighteen hundred and seventy."

It will be noticed that, although Sec. 4895 provides that "patents may be granted and issued or reissued to the assignee of the inventor or discoverer," no form of grant is prescribed either in Section 4896 or the rule or practice of the Office founded thereon; and, therefore, although the language is perhaps broad enough to permit the issuance of a patent directly to an executor or administrator whenever a new application is filed, or letters of administration or executorship recorded, still the general form of grant prescribed in Sec. 4884 is applicable whenever an inventor dies and no executor or administrator is appointed or proof of title recorded. In the former case, as the executor or administrator becomes the applicant, the patent may properly in terms issue to him in his representative capacity; but in the latter case, where there is no executor or administrator or proof of title, "the application retains its original status in the Office and is disposed of precisely as if the applicant had not died." In this view, Sec. 4884 is always applicable when a new application or proof of title is not filed, and in such case the patent should contain "a grant to the patentee,* his heirs or assigns."

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* That "patentee" here means inventor or assignee is clear from the fact "that a patent does not vest in the heirs or devisees of a patentee's

A sufficient reason for a practice which will not require the Office to be over particular in a matter of this kind is thus suggested by Robinson:

> "It is obvious that the Patent Office is not a tribunal by which the adverse claims of heirs and devisees may be decided. It is not practicable there to test the validity of wills, to construe testamentary provisions, or to determine who are proper heirs at law. All such questions must necessarily be left to the local courts within whose jurisdiction they arise. In issuing a patent, therefore, the law contents itself with an examination of the claims which the alleged inventor might have urged, if living, and finding them well founded grants the patent to his personal representative, leaving the actual owners of the right to adjust their controversies in the tribunal of the states where they reside." Robinson on Patents, § 404.

The danger of issuing patents in the name of any one claiming to be executor or administrator, without the filing of a new application, is suggested by the fact that, in the present case, the administration proceedings of Mr. Rankin, Mrs. Boyle and Mr. Tuffly, each at different times claiming to represent the James Boyle estate, have all been questioned. Undoubtedly a patent issued to an administrator *de facto* would be valid so far as regards form, but if he was not administrator *de jure* it might give him an undue advantage in a conflict between different parties claiming the right to administer, especially if he should make and place on record an assignment of his title as administrator. In what is known as the Tuffly proceeding, in reference to this very patent, the Commissioner once said that "an administratrix *de facto* probably might convey as absolute a title to the property of the deceased as though her appointment were regular and valid." All this certainly suggests the

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administrator." (Robinson on Patents, Sec. 404, Note 2; *Pelham* v. *Edelmeyer*, 25 Off. Gaz., 292.) In this view, a patent cannot be properly issued to an administrator, *his* heirs or assigns, and hence an administrator cannot be considered "the patentee" contemplated in Sec. 4884.

propriety of permitting interested parties, especially parties acting in a fiduciary capacity, to accept a grant in the form prescribed by the statute—that is, in the name of the patentee, his heirs or assigns—"leaving the actual owners of the right to adjust their controversies in the tribunals of the states where they reside."

It may be said, however, that Sec. 4896, and the rule of practice founded thereon, contemplates the issuing of a patent in the name of an executor or administrator. Although a patent may be so issued, still there is nothing in the statute or rule making this imperative; and there is no necessity for such a construction, inasmuch as a patent granted in the statutory form, to "the patentee, his heirs or assigns," inures at once to his legal representative, whether such representative be executor, administrator or assignee. (*Shaw Relief Valve Co.* v. *New Bedford*, 19 Fed. Rep., 753; *Bradley* v. *Dull*, Ibid., 913; *Hamilton* v. *Kingsbury*, 14 O. G., 448.) As Judge Lowell says in the first of these cases:

> "It has never been doubted before that a patent is personal property which follows the ordinary course, and goes to the executor or administrator in trust for the next of kin. The cases take this for granted, and when any question has been mooted, it has had reference to the due qualification of the executor, or administrator, or something of that sort, as in *Rubber Co.* v. *Goodyear*, 9 Wall., 788. The text writers treat of patent rights as personal property which goes to the executor. Norman Pat., 145, *Schouler's* Ex'rs, Sec. 200."

In Williams on Personal Property (mar. p. 223), it is said that:

> "The privileges granted by letters patent are, therefore, plainly an instance of an incorporeal kind of personal property."

If the title to a patent issued to "the patentee, his heirs or assigns," will, upon the death of the inventor, thus remain in abeyance in the heirs until an executor or administrator is appointed, and then become vested in the latter by

operation of law, a grant in the statutory form will of course be sufficient to vest title in the executor or administrator, notwithstanding death of the inventor pending the application.

In carrying out the provisions of the statute, it has become a universal practice to designate the inventor by name in the grant, no matter in whom the title is or is to vest, either by assignment or operation of law. It is, therefore, obvious that in many instances the name of the inventor is used merely for identification and not as indicating ownership in the grant. In this view, there is no necessity of a construction of Sec. 4896, or the rule of practice founded thereon, which requires the grant to be in any other or different form than prescribed in Sec. 4884, namely, to "the patentee, his heirs or assigns"—and this without special regard to ownership of the invention.

This section, as well as Sec. 4895, has only two objects in view: (1) to designate who shall make the oath in case of assignment or death, and (2) to designate in whom the title shall vest in case of assignment or death; and, as above shown, the second of these objects, the one in question, is fully accomplished by the issuance of a patent in the name of "the patentee, his heirs or assigns." Why, then, should further formalities be required? In this view, a patent so granted is issued to the inventor's "legal representative," notwithstanding he is not named or referred to in the grant, it being a matter of indifference when he makes proof of his title, whether before or after the grant. All the requirements of Sec. 4896, and the rule founded thereon, are therefore fully complied with, and all the objects of both fully accomplished, by a grant in the name of "the patentee, his heirs or assigns."

Section 1 of the Act of 1790 provided that a patent should contain a short description of the invention, and a grant to

the "petitioner or petitioners, his, her or their heirs, administrators or assigns." Sec. 5 of the Act of 1836 provided that a patent should contain such description "and in its terms grant to the applicant or applicants, his or their heirs, administrators, executors or assigns," etc. The present statute, which was first enacted in 1870, omits all reference to executors or administrators, and as to this point simply requires the patent to contain "a grant to the patentee, his heirs or assigns."

It must be apparent from this history of the provision in question that there was a constant tendency towards simplification as to formalities, until the Act of 1870 was passed, which merely requires mention in the grant of parties beneficially interested, or who might, by reason of death or assignments, be so interested. This process of simplification finally reached the point of omitting from the grant all reference to merely formal parties—executors or administrators—and this for the obvious reason that their title would always vest by mere operation of law. This view is in accordance with Judge Lowell's decision in *Shaw Relief Valve Co.* v. *New Bedford*, 19 Fed. Rep., 753, and Judge Acheson's decision in *Bradley* v. *Dull*, Ibid, 913, in which it was held that an administrator became vested with the title to the patent by mere operation of law, notwithstanding the omission of the words "executors or administrators" from both the statute and grant. In the first of these cases, Judge Lowell, citing authorities, says:

> "A grant of personal property to a man and his heirs, without further qualification, means to him and his next of kin, according to the statute of distributions. . . . Down to 1836 the word 'executors' was omitted and patents were issued to the patentee, his 'heirs, administrators or assigns' (St. April 10, 1790, Sec. 1; 1 St. 110; St. Feb. 21, 1793, Sec. 1; 1 St. Sec. 321), but no one ever doubted that executors would take the title. In 1836 executors were added, and the grant was to the patentee, his 'heirs, administrators, executors

> or assigns.' (St. July 4, 1836, Sec. 5; 5 St. 119). In 1870 administrators and executors were left out. This omission is not significant. The law was not changed by it."

In *Bradley* v. *Dull*, Judge Acheson, referring to omission of the words "executors and administrators" in the Act of 1870, says:

> "This change, in connection with some other provisions of the existing law, it is contended, indicates an intention on the part of Congress to secure the benefits of the invention to the heirs of the deceased patentee, in case of intestacy, to the exclusion of the administrator. An impressive argument was made by counsel in support of this view, but the contrary has just been decided in the First Circuit in the case of *Shaw Relief Valve Co.* v. *City of New Bedford*, 19 Fed. Rep., 753, in which was involved the identical question now before me. To the able opinion of Judge Lowell in that case I can add nothing. Adopting this conclusion, I must overrule this defense."

If the word "heirs," as used in Sec. 4884, includes executors and administrators, as Judges Lowell and Acheson say it does, it follows that the provision of Sec. 4896, that an executor or administrator shall take the patent "in trust for the heirs at law of the deceased," is not the creation of a trust, but simply a declaration of the common law principle that a patent, being personal property, "follows the ordinary course, and goes to the executor or administrator in trust for the next of kin." The inventor being dead, his executor or administrator takes the patent "in trust for the heirs at law," no matter how the grant is worded—whether in the name of "the patentee, his heirs or assigns," or otherwise—in the same manner and to the same extent as he takes other personal property of the deceased. Hence, the title devolving upon the executor or administrator, no matter how the patent is worded, the provision of Sec. 4896 is fully complied with by a grant to "the patentee, his heirs or assigns."

Although the title to a patent thus granted becomes vested in "the executor or administrator in trust for the heirs at law," where an administrator has been previously appointed, or whenever one is appointed, still Sec. 4884 is apparently intended to prevent the title from failing in cases where an application has been filed but no administration proceedings had. In such case the reasonable meaning of the statute is that the title shall vest directly in the "heirs," as executors *de son tort*, or in the same way as the title to other property conveyed to minor heirs, insane persons, or others incapable of selling or conveying. It is an elementary principle that "the capacity to take as grantee is much less restricted than that required to make a grant" (3 Washburn on Real Property, 4th Ed., 267), and therefore, a grant to the heirs of an inventor directly would seem to be good—just as in the Whitcomb case Judge Blodgett stated that a patent to an insane person would be good—although the appointment of an administrator might be necessary to transfer title. In this view, and in perfect consistency with Judges Lowell and Acheson's decisions, "heirs" may be the real grantees, whenever an executor or administrator is not appointed; and this contingency seems to have been contemplated and provided for by the statute, so that in no case should the grant fail for want of proper parties.

It appears, then, that although great care has been exercised to protect all parties beneficially interested, there has been a constant tendency towards simplification in the form of grant, until the point of omitting all reference to merely formal parties has been reached. If this be true, it shows that the legislative mind, considering substance as paramount to form, has provided for the use of such general and comprehensive language in the grant as to include directly or indirectly all parties beneficially interested, without mentioning or even referring to merely formal

parties. Why, then, should a court of equity feel called upon to say that anything more is required—that it is necessary to include formal parties in the grant?

It is also noticeable that the Act of 1836 required that a patent "in its terms grant," etc. The omission of these words, "in its terms," from the present statute can have no meaning or significance, unless it be considered that too much importance was not intended to be attached to mere matters of form. In other words, it seems clear from the omission of these words, "in its terms," that the present statute proceeds upon the theory that it will be sufficient if the patent contain "a grant to the patentee, his heirs or assigns," in any language or form of words that will enable them to be identified in any proper way.

Assuming the legislative intent to be in favor of substance rather than form, the question arises, what is meant by a grant to "the patentee, his heirs or assigns"? Is it merely a personal grant to the individual named as patentee, or is it a grant to all the different classes or persons who may be beneficially interested and have capacity to take? In the present case, was the grant to James Boyle individually, or was it to James Boyle if he was living, *or* to his "heirs" if he was dead, *or* to his assignees if he had made assignments?

In our view, the grant is broad enough to include, and specific enough to designate, everybody beneficially interested; and we believe this construction to be required by the statute itself, by the decisions of the courts on similar questions, and by every consideration of public policy, interest or convenience.

2. *Patent "Obtained" by Administrator.* It should be remembered that Mr. Rankin, who held a contract entitling him to a half interest in the invention and patent, was appointed administrator, and controlled the application as such and as an equitable owner of a half interest—with a

contingent right to the whole—for some little time prior to the issuance of the patent, the final fee and other expenses being paid by him as administrator or part owner. In other words, there was both an administrator and equitable owner at the time of the issuance of the patent, and the simple question is, whether the failure to previously record title papers in the Office was fatal to the grant.

At the time the patent was granted Rankin was acting as "temporary administrator" under the laws of Texas. It does not appear what powers were conferred upon a temporary administrator, but even assuming that they relate to collection and not distribution of assets, the duty of "obtaining" a patent belongs rather to the former than to the latter. To take the necessary steps to obtain the title to a franchise for an estate is rather in the nature of collection than of administration or distribution. The statute under consideration makes no distinction in terms between a temporary and a permanent administration, and there appears to be no ground for such distinction. It manifestly refers to the executor or administrator for the time being, without regard to successive administrators, who would simply succeed to the trust declared by Section 4886, if it had not already been performed, as they would succeed to all other trusts incidental to the office. If a temporary administrator took out letters in his own name, he might be compelled to assign them to a permanent administrator appointed subsequent to the grant, but this fact does not militate against the power of the temporary administrator to obtain them in the first instance.

As the title of the invention vested in the administrator the moment he was appointed, and by virtue of his appointment, there was no necessity that the "grantee or grantees should be named," the only requirement in this respect being that the description should be such as to enable him or them to be "ascertained by extrinsic testimony" and thus

"distinguished from all others." (*Hall* v. *Leonard*, 1 Pick., 27, 30; *Lawrence* v. *Fletcher*, 8 Met., 153, 163.) This requirement is fully complied with by the words used, "James Boyle, his heirs or assigns." As already explained, the the word "heirs" includes "administrator," and so the grant may be treated the same as if it had been made to the administrator of James Boyle, deceased, without naming him. The administrator's title was afterwards susceptible of proof as readily and in the same way as before issuance of the patent, or as would have been the title of an administrator appointed in a case of death after issuance. In all respects, therefore, it being permissible to ascertain the grantee by "extrinsic testimony" (*Jackson* v. *Goes*, 13 Johns., 518, 524; *N. W. Fire Ex. Co.* v. *Phil. Fire Ex. Co.*, 1 Bann. & A., 177, 181) the grant is as certain and definite as if it had been to Thomas L. Rankin, administrator, etc.

3. *Alternative Form of Grant.* The form of grant to "James Boyle, his heirs or assigns" is elliptical, and if forcibly expanded so as to include its full signification, must have supplied the word "and" or the word "or" between "Boyle" and "his." It either means Boyle *and* his heirs or assigns, or Boyle *or* his heirs *or* assigns. It may possibly mean either, although the natural usage of language, independent of technicalities, would imply from the use of the word "or" before "assigns" that the same word should be supplied before "heirs," thus making the phrase read "James Boyle *or* his heirs or assigns."

In real estate conveyances, in which the word "heirs" is used as a word of limitation, the grant is "to A. B., the grantee, his heirs *and* assigns" (Appendix to Blackstone Com., Book II), which means "to A. B. *and* his heirs *and* his assigns;" but what reason is there for supplying the word "and" before "his," and thus interpreting the phrase "A. B., his heirs and assigns," to mean "A. B. and his heirs

and assigns," except the use of the word *and* before "assigns"? Moreover, if the rules of interpretation applicable to real estate conveyances be applied and the grant to "A. B., his heirs or assigns," construed to mean "A. B. *and* his heirs *or* his assigns," such a construction would make the grant valid if A. B. had assigned the right to the patent before its issuance and should then have died before the grant.

The legislature, in framing the language of the grant, cannot be presumed to have had any intention of placing a meaning on words that would lead to the most unjust discrimination against heirs. If Congress meant *or* assigns, of which there can be no doubt, it meant *or* heirs as well. It did not mean that an inventor's assignees should have the benefit of the grant in case of his death before the patent issued, but that his heirs, under the same circumstances, should be crowded out by an unexpressed conjunction. The conjunction to be supplied is *or*, not *and*. To supply the word *and*, and for that reason hold the grant void, would be to import into the construction of the statute technical meanings which relate solely to real estate law, and have, as shown, no relation whatever to the subject of the grant. It would violate the rule that our patent statutes are to be construed liberally. It would be straining the language in order to defeat a grant made in pursuance of a beneficent public policy, by applying to it subtilties of meaning derived from ancient feudal law, notwithstanding every consideration requires that *if it is possible* by any interpretation, not in actual violation of the rules of the English language, to construe the words so as to *sustain* the grant, that interpretation should be adopted. In this case such an interpretation can be adopted, and, in view of the history of the law, should be adopted.

In order to defeat the grant, the Circuit Court applied the strict rules or technicalities of real estate law, citing, among

other authorities, cases relating to land grants. There are a few authorities, however, in relation to land grants that seem to have been overlooked. One of them is *Hogan* v. *Page*, 2 Wall., 605—and to the same effect is *Carpenter* v. *Rannels*, 19 Wall., 138, 145—in which the Supreme Court, speaking through Justice Nelson, says:

> "A difficulty had occurred at the Land Office, at an early day, in respect to the form of patent certificates and of patents, arising out of applications to have them issued in the name of the assignee or present claimant, thereby imposing upon the office the burden of inquiring into the derivative title presented by the applicant. This difficulty also existed in respect to the Boards of Commissioners under the Acts of Congress for the settlement of French and Spanish claims. The result seems to have been, after consulting the Attorney General, that the Commissioner of the Land Office recommended a formula that has since been very generally observed, namely, the issuing of the patent certificate, and even the patent, to the original grantee or *his legal representatives*, and the same has been adopted by the several Boards of Commissioners. This formula 'or his legal representatives,' embrace representatives of the original grantee in the land, by contract, such as assignees or grantees, as well as by operation of law, and leaves the question open to inquiry in a court of justice as to the party to whom the certificate, patent, or confirmation, should inure."

In *Bowman* v. *Long*, 89 Ill., 19, 22, Justice Scholfield introduces a quotation of the above language from *Hogan* v. *Page* by this statement:

> "The land department and courts of the United States, in cases affecting purchases or confirmations of titles from the United States, uniformly construe the words, "legal representatives," in certificates for patents, etc., as embracing heirs where there has been no transfer, and assignees or grantees where there has been a transfer."

For further authorities in this connection, see

Grand Gulf R. R. & B. Co. v. *Bryan*, 8 S. & M., 234, 275.

Warnecke v. *Lembca*, 71 Ill., 91, 92–93.
People v. *Phelps*, 78 Ill., 147, 149.

This general form of grant being already required by the Patent Act, there was no necessity for formal consultation or action by the Attorney General or other officers. "This formula, 'or his legal representatives' [heirs or assigns], embrace representatives of the original grantee in the land [invention], by contract, such as assignees or grantees, as well as by operation of law, and leaves the question open to inquiry in a court of justice as to the party to whom the certificate, patent, or confirmation, should inure."

This was the law with reference to land grants at the time the Boyle patent was issued; but the Circuit Court overlooked these decisions and seems to have considered the law at that time to be as announced in *Galloway* v. *Finley*, 12 Peters, 264, decided in 1838, and earlier cases.

The old form of land grant, the one used under the Act of 1820, was "unto the said.....and to.....heirs." This was probably the form of grant considered in *Galloway* v. *Finley* and earlier cases referred to, and was not the form used at the time *Hogan* v. *Page* was decided (1864), previous to which an alternative formula had been adopted embracing "representatives of the original grantee . . . by operation of law," as well as otherwise. If, instead of running to the grantee "or his legal representatives,' the land grant considered in *Hogan* v. *Page* had run to the grantee, "his heirs or assigns," would this have affected the decision? In our view it certainly would not, because in the sense of the Supreme Court's definition, "heirs or assigns" mean exactly the same as "legal representatives." The conclusion seems irresistible, then, that the rule of the old decisions, cited by the Circuit Court, being no longer in force, the present patent would have to be sustained, under the rule of *Hogan* v. *Page*, if it were a land grant and not an invention patent.

Another real estate case which the Circuit Court seems to have overlooked, is that of *Ready* v. *Kearsley*, 14 Mich., 215, in which Judge Cooley thus explains the rule applicable to a deed to the grantee *or* his heirs:

> "The deed is to Stewart or his heirs. . . . The manifest intent here was to vest the title in Stewart, if living, and in his heirs or devisees if he were then dead. Conveyances in this form by public officers or boards have not been uncommon, for the reason that such conveyances are usually made at a period subsequent to that when the right to the conveyance accrued; and it is not always known when the deed is made that the party entitled is living. In *Hunter* v. *Watson*, 12 Cal., 363, it was held that a deed to a person *and* his heirs would be void, since the words 'heirs' was a word of limitation and not of purchase, and consequently, there was no person to take under it. The validity of deeds with an alternative clause, like the one before us, was directly affirmed by the Supreme Court of the United States in *Hogan* v. *Page*, 2 Wallace, 605."

But this is simply a general rule of real estate law, which is thus stated by Washburne (3 Wash. on Real Est., 3d ed., 237, mar. p. 565):

> "A deed to A *or* his heirs is good, because if A is alive he has no heirs, and if dead his heirs can be ascertained *aliunde*."

We have no quarrel to make with Judge Blodgett's statement that "a patent for an invention is a grant, and must have a grantor and grantee;" but our position is that under the rule of *Hogan* v. *Page* the Boyle patent has a grantee as fully and completely as if it had been a land grant. In that case the words "or his legal representatives" were defined as a sufficient designation of a grantee; in the present case, as we submit, the words "heirs or assigns" should receive the same construction.

Nor is the case of *Davenport* v. *Lamb*, 13 Wall., 418, to which Judge Blodgett refers, at all against appellant. It

states the common law rule in reference to land grants—which never had any application to invention patents—and then refers to the curative act of 1836, passed for the express purpose of obviating hardships under that rule. The only possible application it has in the present case is to show that, owing to the form of land grant at first used, subsequent legislation was considered necessary. In other words, it shows that in order to prevent hardships under the old law in reference to land grants, Congress considered it advisable to take further action—to the same general effect as the action taken by the Attorney General and Commissioner of the Land Office, explained in *Hogan* v. *Page*. That this further action was considered necessary in reference to land grants, and not necessary in reference to invention patents, shows that Congress, the Attorney General, the Commissioner of Patents, and everybody charged with duty or responsibility in reference to invention patents, always considered the form of grant prescribed by the statute, to the patentee "his heirs or assigns," abundantly sufficient to provide for cases like the one now before the court. If this is not true, why was such special action taken in reference to land grants, both by Congress and department officers, and not taken in reference to invention patents?

4. *Patent Personal Property, not Real Estate.* As already shown, however, a patent is personal property, and not real estate. It is a franchise, a personal privilege, a peculiar statutory license, and no more real estate than a license to export wool, or to trade with the Indians, or to make a sale of gun-powder, or to kill the King's deer on the road to Parliament was real estate by the common law. It has not a single attribute of real estate. It attaches purely to the person—it inures to the benefit of the inventor's legal representatives by virtue of the statute. The authorities upon this point are uniform.

In *Shaw Relief Valve Co.* v. *City of New Bedford*, 19 Fed. Rep., 753, 754, Judge Lowell says that "it has never been doubted before that a patent is personal property," and thus ridicules the idea that it can be treated as real estate:

> "The defendant contends that the grant of a patent by Rev. St., § 4884, is to the patentee, 'his heirs or assigns,' and that by force of these words a patent descends directly to the heirs, without the intervention of the administrator. This is a new and somewhat surprising proposition. . . . He has not argued that the widow can be endowed of it, but I suppose that will follow!"

If a patent is personal property—as to which there can be no doubt—it follows that the technical signification of the terms used in real estate conveyancing has no application in determining its meaning or construction; and this for several reasons.

In the first place, in real estate grants or deeds the word "heirs" is used as a word of limitation, generally to indicate that an estate granted is a fee or estate of inheritance, and not an estate for life or years; but it cannot have this meaning in an invention patent, because the nature of the estate, the duration of the grant, is determined by the words "for the term of seventeen years." If real estate law be applicable at all, this clearly makes it an estate for years, as distinguished from an estate of inheritance; for, as Blackstone says:

> "Every estate which must expire at a period certain and prefixed, by whatever words created, is an estate for years. And, therefore, this estate is frequently called a term, *terminus*, because its duration or continuation is bounded, limited and determined; for every such estate must have a certain beginning and certain end."

The word "heirs" must therefore have some other meaning than in real estate conveyances, in which, as Blackstone says, it is used with "very great nicety." Its use cannot

turn a patent into real estate, nor require the same meaning to be given to the expression "patentee, his heirs or assigns," in a grant of what is purely personal, that might be given to the same expression if used in a conveyance of real estate. As used in a patent, the word "heirs" does not define or limit, or in any manner affect the interest of the original patentee.

Where the word "heirs" is used in a grant of real estate, as to a man "and his heirs," it is a word of "limitation," —*i. e.*, definition of the extent of the estate of the grantees, so that by the famous rule in Shelly's case, a grant to a man expressly for life and to his heirs, or with the remainder to his heirs became an absolute grant of the fee. The use of the word "heirs" under the niceties of real estate law, so qualify the words "for life," as to in substance abolish them and turn an expressed life estate into an estate in fee. But a grant to a man for life, with the remainder to his "executor or administrator," would have no such effect. The words "executor or administrator" would not qualify or affect the words "for life" as the word "heirs" qualifies them. But no such distinction is applied to the grant of a patent. It runs to the patentee or his heirs or assigns simply because the statute provides that the inventor may assign his interest either before or after the grant of his patent, or that, if he has not done so, the grant shall inure to the benefit of his heirs at law.

The term "heirs" as used in a patent, has no possible effect upon the interest which the inventor himself has in the patent during his lifetime. Suppose the Act provided that the patent should run to the "patentee, his executor, administrator or assigns," would that alter the patentee's own interest in the patent during his lifetime? Not a particle. In real estate conveyances such a change of terms from "heirs" to "executors, administrators," etc., might make all the difference to the grantee between being absolute owner

and merely a tenant for life, liable for waste, and limited in many ways in the enjoyment of his property. Not so in the case of a patent; for, as Judge Lowell says, "the omission of administrators and executors from the Act of 1870 was not significant—the law was not changed by it." The inventor, as long as he keeps his patent, enjoys it in exactly the same way, and to the same extent, whether it goes, on his death, to his executor or administrator, or to his widow alone, or to his "heirs," or to any conceivable class of persons the statute might designate. The term "heirs" in the statute merely designates the persons who are to have the benefit of the monopoly in case of the inventor's death; and whether it be construed to mean the persons who, if a patent were real estate would inherit the estate under the laws of descent, or those who would succeed to the inventor's personal property under the statute of distribution, is immaterial. This is what Judges Lowell and Acheson say. In either case the word merely indicates the class of persons who have the right to the grant in the event of the inventor's death. As used in the statute, the word "heirs" is not a word of *limitation*, as in real estate deeds, *but a word of purchase.*

The conclusion is irresistible that the "heirs" are merely certain persons who, in a certain event, are to have the benefit of the grant solely by virtue of the statute, and not by virtue of their relationship to the inventor. That event is the death of the inventor, and in case he dies before the grant begins to run, the heirs have the benefit of the full seventeen years, the term of the grant. Construed, therefore, with reference to the statute as well as with reference to the considerations above suggested, the words "his heirs or assigns" mean in the *alternative.* The grant is to the inventor, *or*, if he shall have died before or after the grant without assignment, then (as by statute

provided) to his heirs, *or* (in case he has assigned before or after the grant) to his assignee.

In real estate law, a grant to a man "*and* his heirs" is void if the man is dead at the time of the grant, because, and solely because, under the technicalities of real estate law, the word "heirs" in such a grant is a word of "limitation," *i. e.*, merely a word describing or limiting the estate conveyed, and not indicating a grant to the heirs at all; consequently, if there was no grantee in existence to take the described estate, the grant was void and the same as if made to a fictitious person. But no such rule has ever been applied, or can be applied, to a transfer of personal property, in which the use or omission of the word "heirs" has no effect whatever by way of limitation or otherwise in fixing or determining the nature or extent of the estate or title transferred. As to this, Williams says:

> "The word 'heirs' and 'heirs of his body' are quite inapplicable to personal estate; the heir as heir has nothing to do with the personal property of his ancestor. Such property has nothing hereditary in its nature, but simply belongs to its owner for the time being. Hence a gift of personal property to A simply, without more, is sufficient to vest in him the absolute interest. Whilst under the very same words he would acquire a life estate only in real estate, he will become absolutely entitled to personal property." Williams on Personal Property, 242.

Applying this rule, the patent, if issued during Mr. Boyle's lifetime, would have become vested in his administrator and assignee, if it had been issued to him alone, all reference to heirs, executors, administrators or assigns being omitted, and so the word "heirs" was not necessary in order "to vest in him the absolute interest," and thus enable the patent to become a part of his estate. Now, if the word "heirs" is not used in an invention patent, in the same sense as in a real estate deed, and is not necessary to enable the right to

become vested in the executor or administrator, what is its meaning ?

In our view, the only answer to this question is the one above suggested—that, like the word "assigns," it is used to designate a class of persons in a certain contingency, beneficially interested at the time of the grant.

Judge Blodgett, however, seems to have considered that if granted without the word "heirs," a patent might be construed as wholly personal, to end with the life of the grantee. A patent being personal property, why should the omission of the word "heirs" have this effect any more than its omission from a bill of sale or other instrument relating to personal property ? As we respectfully submit, this view of the learned judge is also shown to be erroneous by consideration of the construction which has been put upon privileges expressly granted to a patentee alone, as, for instance, the privilege of obtaining an extension. Sec. 18 of the Act of 1836, and Sec. 63 of the Act of 1870, provided that "the patentee" might obtain an extension in certain cases, but made no provision whatever for an extension to his executor or administrator. Notwithstanding this, it has been often held that an executor or administrator could obtain an extension. (Robinson on Patents, Sec. 779 ; *Washburne* v. *Gould*, 3 Story, 122; *Woodworth* v. *Sherman*, 3 Story, 171 ; *Brooks* v. *Jenkins*, 3 McL., 432 ; *Brooks* v. *Bicknell*, 3 McL., 250 ; *Wilson* v. *Rosseau*, 4 How., 646.) It has also been held that, although the statute did not expressly so provide, the extended term was assignable. (Robinson on Patents, Sec. 770; *Consolidated Fruit Jar Co.* v. *Mason*, 7 Daly, 64 ; *Nicholson Pavement Co.* v. *Jenkins*, 14 Wall., 452 ; *Railroad Co.* v. *Trimble*, 10 Wall., 367 ; *Clum* v. *Brewer*, 2 Curtis, 506 ; *Newell* v. *West*, 13 Blatch., 114.) If the right to obtain an extension, thus expressly limited to "the patentee," afterwards became vested in an executor or admin-

istrator, or if the extended term granted to the patentee alone was assignable, why should it be said that if the patent had been granted to James Boyle alone it would have been a mere personal grant, not capable of being assigned or becoming vested in his legal representatives?

As already explained, the meaning of the word "heirs" is apparent from the use, both in the statute and grant, of the word "assigns" in the same connection. Sec. 4895 provides that "patents may be granted and issued or reissued to the assignee of the inventor or discoverer," the assignment being first entered of record; but, notwithstanding this provision, it has been frequently held that a patent issued to the inventor, after an assignment of his entire interest had been entered of record, immediately and by operation of law inures to the benefit of his assignees. (*Gayler* v. *Wilder*, 10 How., 477; *U. S. Stamping Co.* v. *Jewett*, 18 Blatch., 469; *Consolidated Electric Light Co.* v. *McKeesport E. Light Co.*, 34 Fed. Rep., 335; *Consolidated E. Light Co.* v. *Edison E. Light Co.*, 23 Blatchf., 412, 25 Fed. Rep., 719.) How could this be the case if the word "assigns" did not include a class benificially interested, and who, under proper circumstances, should be entitled to take the patent without regard to the form of grant?

In this case, if an assignment of the entire interest had been recorded before issuance of the patent, and if James Boyle had been living at the time of its issuance, there can be no doubt that, under these authorities, the patent would have immediately inured to the benefit of the assignee. If the assignee would thus have obtained the entire interest if Mr. Boyle had been living at the time of the grant, why should he lose such interest merely because of his death prior to that time, but after he had ceased to have any interest whatever? In such case, the right of the assignee would have become vested at the time the assignment was executed and recorded, and it would seem that, notwithstanding the

death of Mr. Boyle, the patent, however issued, would have immediately inured to his benefit, and would in every respect have been as good and valid as if Mr. Boyle had been living at the date of its issuance. By analogy, the right of all parties included in the word "heirs," as used in the statute and grant, became absolutely vested at the time of Mr. Boyle's death, and they were afterwards entitled to as full and complete protection, notwithstanding the form of the grant, as an assignee would have been if Mr. Boyle had died after assigning his entire interest. If this is not so, then there is an unjust discrimination in favor of "assigns" and against "heirs," which discrimination is not found in the grant itself, the same form of words being used as to both, but in the technical construction of courts professing to proceed in a just and liberal spirit.

If intention be considered—and generally the intention should have a controlling influence—it must be clear that the object of the government, as expressed in both the statute and patent, was to make a grant to any and all parties beneficially interested in the Boyle invention; and the only object of judicial investigation, in a question of this kind, "*is to ascertain the intention of the legislature which framed the statute.*" (Sedgwick on Con. Stat., 194.) In this view, the only possible question is whether the language is sufficiently definite to designate or distinguish the grantee. There being an administrator and assignee (Thomas L. Rankin occupying both positions), so that the grantee could be readily distinguished, and the course of title readily traced, the following general rules, applicable even in strict real estate law, ought to settle the question :

> " It is essential to the validity of the grant, that the parties be named in the deed or plainly designated, so as to distinguish them from all others. If they are so distinguished, the grant would be good *without any name at all*, and a mistake in the name in such case

would not vitiate. A grant, therefore, to *Henry*, Earl of Pembroke, where his name is *Robert*, is good; or if a grant be made to A and his wife *without naming her* by the name of baptism, yet she shall take; for being called the wife of A, she is sufficiently designated. So, if a grant be made to a father and his son, he having but one son, it is good." *Hall* v. *Leonard*, 1 Pick, 27, 30.

"It is not essential to the valitity of a grant, that the grantee or grantees *should be named;* but if not named, they must be ascertained by description so as to be distinguished from all others." *Thomas* v. *Marshfield*, 10 Pick, 364, 366.

"Nor is it necessary in order to give effect to the deed that the trustee [of an unincorporated association] should be named. It is sufficient that they are so clearly described as to distinguish them from all others, so that there can be no uncertainty in the grant." *Lawrence* v. *Fletcher*, 8 Met., 153, 163.

As will be noticed, these general rules simply require sufficient language to distinguish the grantee from all others, and when such language is used the grant is "good, without any name at all," or when a wrong name is used. The language of the grant in this case, to "James Boyle, his heirs or assigns," certainly complies with this rule, for there could be no difficulty in identifying the parties referred to "by extrinsic testimony," or "testimony *de hors* the grant."

"A deed to the heirs of a man deceased is valid. *Id certum est quid certum reddi potest.* The presumption of law would be in favor of sustaining the deed if any presumption at all is to be indulged. There was, however, proof in this case showing who the heirs of Boone were." *Boone* v. *Moore*, 14 Mo., 420, 425. See also Perkins on Conveyancing, § 53.

"The identity of the grantee, as well as of the thing granted, must, generally speaking, partake, more or less, of a latent ambiguity, explainable by testimony *de hors* the grant." *Jackson* v. *Goes*, 13 Johns., 518, 524.

Applying this rule in reference to extrinsic testimony, in an ordinary patent case, Judge McKennan says:

> "It may, therefore, be stated as the result of these and numerous other judicial decisions, that a grant is not necessarily void by reason of an error in the Christian name of the grantee, and that where it contains matter descriptive of the person for whom it was intended extrinsic proof of such matter is admissible to identify the grantee, and, if he is thus identified, effect will be given to the grant accordingly." *Northwestern Fire Extinguisher Company* v. *Philadelphia Fire Extinguisher Company*, 1 Banning & Arden, 177, 181.

As already suggested, it must be clear that the object of the Government, as expressed in both the statute and patent, was to make a grant to any and all parties beneficially interested in the Boyle invention; but suppose this were otherwise, and that the Patent Office officials understood that James Boyle was living, and that they were granting a patent to him—what of it? The *intention* of the Patent Office in granting a patent is not conclusive, as it might be in case of a contract between private parties. If the patent can be properly construed as a grant to the heirs of James Boyle, and if, as a matter of fact, the administrator of James Boyle *obtained* it, the omission to file proof of the death of Boyle and of the appointment of an administrator cannot make the patent void. The omission to file such proof is at most a curable irregularity, and might be remedied by filing it even now.

As to the wording of the grant, Judge Lowell says that "the Acts of Congress have not been drawn with technical accuracy in this particular" (19 Fed. Rep., 754); and as to Sec. 4896, Commissioner Paine says that "however awkwardly the legislative will may have been expressed," etc. (16 Off. Gaz., 1050), but, speaking of the same section, Commissioner Hall says that "the statute is broad enough to cover" cases for which it "does not provide specifically,"

thus, at least, recognizing the propriety of construction (43 Off. Gaz., 505). The fact that the statute has "not been drawn with technical accuracy" and that the legislative will has been "awkwardly" expressed, certainly emphasize the propriety of a reasonably liberal construction as to the present question.

In view of all these considerations, we submit that, from a simple reading of the statute, the grant in this case should be construed as running directly to the heirs, executors, administrators or assigns of James Boyle, deceased. In such case there can be no doubt as to its validity. Even in real estate law, with all its strictness, "a deed made to the *heirs at law* of a deceased person is good, because the persons who are to take can be ascertained by extrinsic testimony." *Shaw* v. *Loud*, 12 Mass., 446, 447. See also *Boone* v. *Moore*, 14 Mo., 420, 425.

5. *Administrator included in "Assigns."* We have thus far incidentally considered the word "assigns" in its popular acceptation—as meaning an assignee in fact, an ordinary purchaser of the invention; but, in law, it has a broader meaning.

> "An *executor*, as taking by operation of law, may be deemed the assignee in law of the testator. . . .
>
> "Comprehends all those who take, immediately or remotely, from or under an assignor, whether by conveyance, devise, *descent* or *act of the law*." Anderson's Dic. of Law.
>
> "Assignee in law is the person to whom some right or property is transferred, or upon whom it devolves by the mere operation of *law*, and without any express conveyance. In this sense, an executor is the assignee of the testator; an administrator, of the intestate. . .
>
> "Under the word assigns are included not only assignees, properly so called, but *executors and administrators*, the assignee of an assignee *in perpetuum*, the heir of an assignee, the assignee of an heir, the assignee

of an assignee's executor, and a devisee." Burrill's Law Dic.

"An *executor* may be deemed as assignee, in law, to the testator (Dyer, 5); that is, he takes without any appointment of the person, but by operation of law. The testator names the individual as executor, but it is the law that makes him the assignee of the property." *Hight* v. *Sackett*, 34 N. Y. Rep., 447, 451.

Giving full effect to the word "assigns," then, we respectfully submit that, notwithstanding Boyle's death, the patent upon its issuance enured to his assignee in law, his legal representative, in exactly the same way and to exactly the same extent it would have enured to an assignee in fact, a purchaser by contract, if a formal assignment had been previously made; and hence, that, thus enuring to his assignee in law, it is valid under *Gayler* v. *Wilder*, 10 How., 477, and other cases cited on page 43, *ante*. In such case, there was a grantee—the assignee in law—in being and capable of taking at the time of the grant.

It seems to us that, in thus using language broad enough to include heirs, executors, administrators, assignees in fact or assignees in law, Congress has manifested a clear intention to prevent the grant from failing for want of proper parties—as clear, in fact, as was manifested by the curative act referred to in *Galloway* v. *Finley* or the special formula referred to in *Hogan* v. *Page*.

6. *Decisions in Analogous Cases.* If we turn to decisions in analogous cases we find abundant authority for construing the grant as running to James Boyle if he was living, or to his "heirs" if he was dead, or to his "assigns" if he had previously assigned the invention.

As already suggested, an extension of a patent granted to an administrator, the patentee being dead, has been sustained, although there was at the time no law authorizing the granting of an extension to an executor or administrator,

and the statute provided for an extension only to the patentee. (*Wilson* v. *Rosseau*, 4 How., 646.) In *Grant* v. *Raymond*, 6 Pet., 243, a reissue granted before there was any law expressly authorizing reissues was sustained.

A patent granted in the name of the inventor will issue directly to an assignee where an assignment has been previously made and recorded. (*Gayler* v. *Wilder*, 10 How., 477, and other cases cited on page 43, *ante*.) And as already suggested, it seems to be entirely immaterial in such case whether the inventor be dead or living at the time of the grant.

In *Consolidated Electric Light Co.* v. *Edison Electric Light Co.*, 25 Fed. Rep., 719, 720, Judge Wallace sustained a patent issued to an assignee who, prior to the grant, had assigned his entire interest, so that he was not then a proper party to receive the patent, being for all practical purposes an entire stranger to the proceedings. In this case Judge Wallace said :

> " It may well happen occasionally in the pressure of business in the Patent Office that an assignment made during the pendency of an application may be overlooked, although duly recorded, and the patent be issued to the inventor, or to an intermediate assignee whose assignment is on record. If whenever this happens the patent is to be deemed void, notwithstanding the title of the grantee named in it is instantly vested in the true owner by operation of law, and notwithstanding no possible injury or inconvenience can be occasioned to third persons or to the public, the result would be one of such unnecessary hardship that it is not reasonable to suppose that it could have been contemplated by Congress while framing the provisions of the patent laws."

In *Whitcomb* v. *Spring Valley Co.*, 47 Fed. Rep., 652, 657, a reissue to a guardian was sustained, notwithstanding the statute "does not, in terms, authorize a reissue to the guardian of an insane person," but does, in terms, require the oath to be made and the specification signed "by the in-

ventor or discoverer, if he is living," which requirements, the inventor being insane, were not complied with. After reciting the facts, Judge Blodgett said:

> "The patentee, Jonathan W. Harrison, was wholly incapable of applying for a reissue or of managing his own affairs in any manner, and, if any person could protect his interest in the invention he had made by applying for a reissue, such application must be made by his guardian. As the guardian was then in the full possession of the estate and control of her ward, I see no fatal error in the issue of the reissued patent directly to the guardian, although it might, perhaps, have been equally valid if issued to the insane person by name. . . No one, I think, would contend that Mr Harrison lost his right to a reissue by reason of his insanity, nor does there seem to be any ground for doubt that the application for a reissue was properly made by his guardian. The only question is, does the technical issue of the patent to the guardian, as far as it covered the interest of her ward, invalidate it? In *Wilson* v. *Rosseau*, 4 How., 646, an extension of a patent was granted to the administrator, the patentee being dead, although there was at that time no law authorizing the grant of an extension to an executor or administrator, and the statute in regard to extensions in terms authorized an extension only to the patentee. And the same disposition to give a liberal construction to the patent laws, so as to secure the full benefit of the patent to those entitled to it, is shown by the Supreme Court in the case of *Grant* v. *Raymond*, 6 Pet., 243. Guided by the same liberal spirit evidenced by this and other decisions which might be quoted, I have no doubt that this reissue to Mrs. Harrison, as guardian of her insane husband, is a valid reissue, both as to the interest of her husband and the other patentees. It seems to me that these reissues would have been equally valid if made to either the guardian, or made directly to Jonathan W. Harrison. The sustainable interest—that is, the property right in the invention—would have been equally protected in either form of reissue."

It will thus be seen that reissues granted without express statutory authority have been sustained; that extensions to administrators, although there was "no law authorizing the

grant of an extension to an executor or administrator, and the statute in regard to extensions in terms authorized an extension only to the patentee," have been sustained; that a grant to an assignee who had parted with his entire interest, and hence was practically a stranger to the record, has been sustained; and that a reissue to a guardian of an insane person has been sustained, notwithstanding the statute "does not in terms authorize a reissue to the guardian of an insane person" or permit the specification to be signed or oath made by any other person than the inventor "if he is living." In all these cases, the court has followed what Judge Blodgett calls a "disposition to give a liberal construction to the patent laws, so as to secure the full benefit of the patent to those entitled to it." In "the same liberal spirit" the grant to "James Boyle, his heirs or assigns," seems equally valid.

7. *Considerations of Public Policy.* If we come now to consider questions of public policy, we also find that every reason that can be suggested is in favor of sustaining the present grant rather than overthrowing it.

Under the present practice, a patent is issued in not less than nineteen nor more than twenty-six days after payment of the final fee (Rule 222); and when the final fee has been paid and "the case has received its date and number it will not be withdrawn or suspended from issue on account of any mistake or change of purpose of the applicant or his attorney." (Rule 165.) In short, it is exceedingly difficult, generally impossible, to have an application withdrawn from issue after payment of the final fee.

It often happens, also, that an applicant dies between the date of payment of the final fee and issuance of the patent. In a case within our own knowledge, which happened a few months ago, an applicant in this city met his death by accident—an explosion—after payment of the final fee, and only about a week before the patent was to issue; and in the

confusion that followed it was simply impossible to have an administrator appointed and proper proceedings taken in the Office in time to have the patent issue in his name as administrator. This case is cited as an illustration, but it is a matter of common knowledge that applicants often die after their final fees are paid, but before their patents are issued, sometimes death occurring the very day before issuance. In such cases, it is generally impossible to have administration proceedings instituted and proved in the Office before the patent comes out. The facts in this case—there being an assignee and administrator, who controlled the proceedings and paid the final fee, so that the only possible defect was failure to record title—are much stronger than in many cases where patents are thus issued after the death of applicants; and, therefore, a decision against the present grant must necessarily have the effect of wiping all such patents out of existence.

If this result can possibly be avoided, do not public interests, in cases like the present, require the giving of "a liberal construction to the patent laws, so as to secure the full benefit of the patent to those entitled to it?" "If, whenever this happens [failure to prove title in cases of death before issuance], the patent is to be deemed void, notwithstanding the title of the grantee named in it is instantly vested in the true owner by operation of law, and, notwithstanding no possible injury or inconvenience can be occasioned to third persons, the result would be one of such unnecessary hardship that it is not reasonable to suppose that it could have been contemplated by Congress while framing the provisions of the patent laws."

If it is necessary that formal steps be taken by an executor or administrator in every case of death, even where the oath has been made and the application filed, it will be liable to work hardship to assignees whose titles have already become vested, and who, under Rule 5, are entitled to control

the application. If assignees must always wait for the appointment of administrators, and then conduct proceedings through them, serious hindrance, embarrassment and delay in obtaining patents will inevitably result. The assignment having been already made and recorded, and the assignee having the entire interest, what is the necessity of requiring administration proceedings in a case of this kind? Suppose the "assignment made during the pendency of the application is overlooked, although duly recorded, and the patent issue to the inventor," his heirs or assigns, as in this case, do not considerations of public policy require that the grant shall be sustained and the title held to "instantly vest in the true owner by operation of law," notwithstanding that the inventor has previously died?

As a matter of fact, however, patents are constantly issued to assignees, in cases like the present, without any notice whatever being taken of the inventor's death. Suppose, however, that in pursuance of this practice the assignment "is overlooked, although duly recorded, and the patent issue to the inventor," what is its position? Is it to be treated as void, or as simply inuring to the benefit of the assignee, the party "entitled to it"?

Suppose, again, that an applicant dies after having made an assignment of an undivided interest which has been duly recorded, and no administrator is appointed, how is the assignee to be protected if not by the issuance of a patent in the joint names of the inventor and the assignee, the latter being described as owner by assignment of a part interest? Or how is the assignee to be protected in such a case if, in the pressure of business in the Patent Office, the assignment made during the pendency of the application should be overlooked, and the patent issued to "the patentee, his heirs or assigns," his own name being entirely omitted from the grant?

Taking still another illustration, suppose the inventor dies after his application has been filed and allowed, and no executor or administrator is ever appointed—in such case may not the patent be issued in the statutory form to "the patentee, his heirs or assigns," the heirs being either allowed to take directly, or treated as executors *de son tort?*

It will thus be seen that, notwithstanding Judge Blodgett's statement that "there is no hardship in this construction of the law," great public inconvenience will necessarily follow such a construction as will render the present grant invalid: (1) in cases of death after payment of final fee, and when it is too late to stop issuance of the patent; (2) in cases of death after assignment of the whole interest, where the assignment is overlooked "in the pressure of business in the Patent Office;" (3) in cases of death after assignment of an undivided interest where the assignee is required to conduct proceedings through an administrator, or his assignment is liable to be "overlooked;" and (4) in cases of death where no executor or administrator is ever appointed. On the other hand, there is not a single point in which public policy, interests or convenience will be advanced by declaring the grant in this case void.

In his own words, Judge Blodgett's decision is based on the theory that "the patent was void *ab initio* because Boyle, the grantee, was dead at the time the patent was issued." (76.) If this view is correct, then it suggests another ground of hardship; for if a patent thus issued is absolutely void, it cannot be cured by reissue. The remedy by reissue only extends to a patent which is inoperative by reason of a defective or insufficient specification or improper claim, and not to a patent which is absolutely void.

Child v. *Adams*, 1 Fish., 189.
Matter of *Barsaloux*, 14 Off. Gaz., 233.
Ex parte Benton, 23 Off. Gaz., 341.

On this subject Robinson, Sec. 660, says:

> "The defects by which an existing patent can be rendered imperfect are specified by the statutes as any invalidity or inoperativeness arising from inexactness or incompleteness *in the description*, or from inexactness or incompleteness or excess *in the claim*. By enumerating these, the statutes exclude all others and confine the remedy to these alone."

But, in our view, the patent was not absolutely void, but at most merely voidable. Judge Blodgett says that the proceedings in the Patent Office were "quite analogous to the condition of pending suit at law on the death of the plaintiff," and that, in such case, "the suit abates at common law, as a judgment for or against a dead man would be wholly inoperative and void." (75.) Accepting this reference to proceedings in a court of law as an instructive analogy, it simply shows that the patent was voidable and not absolutely void; for, as we respectfully suggest, the learned Judge was wrong in considering that at common law "a judgment for or against a dead man would be wholly inoperative and void." The weight of authority is certainly in favor of the proposition that such a judgment rendered after a court has obtained full jurisdiction is not void, but at most merely voidable.

As to this, Freeman on Judgments (Sec. 140) says:

> "If jurisdiction be obtained over the defendant in his lifetime, a judgment rendered against him subsequently to his death is not void."

In Black on Judgments, Sec. 200, it is said:

> "The great preponderance of authority is to the effect that, where the court has acquired jurisdiction of the subject-matter and the persons, during the lifetime of a party, a judgment rendered against him after his death is, although erroneous and liable to be set aside, *not void* nor open to collateral attack. A late important case [*Mitchell* v. *Schoonover*, 16 Oreg., 211] declares that 'the decided weight of authority seems to

be to the effect that if a court of general jurisdiction, or a court which has acquired full jurisdiction over the cause and over the parties, renders a judgment for or against a party after the death of such party, the judgment is not for that reason void. It may be erroneous, but until reversed by some appropriate proceeding, it is valid.' "

In *Yople* v. *Titus*, 41 Pa. St., 203, it was said :

" Now, it would seem to be well established that in civil proceedings against a person, his death does not so completely take away the jurisdiction of a court, which has once attached, as to render void a judgment subsequently given against him."

In the words of the syllabus in *Claflin* v. *Dunne*, 129 Ill., 241 :

" If jurisdiction be obtained of the person of a defendant in his lifetime, by service, process or appearance, a judgment against him after his death is not void, but only voidable."

To the same general effect are :

Stoetzell v. *Fullerton*, 44 Ill., 112.
Danforth v. *Danforth*, 101 Ill., 236.
Collins v. *Knight*, 3 Tenn. Ch., 183.
Spaulding v. *Walthen*, 7 Bush., 659.
Warder v. *Tainter*, 4 Watts, 278.
Ames v. *Webbers*, 10 Wend., 576.
Lopez v. *De Tasel*, 8 Taunt., 712.

This rule is applicable whether a judgment is rendered against a defendant or in favor of a plaintiff who has died pending the suit and after the court had obtained jurisdiction.

In *Coleman* v. *McAnulty*, 16 Mo., 173, 176, it is said :

" In the case of *Warder* v. *Tainter*, 4 Watts, 278, the court says, the authorities are abundant to show, that in no case is a judgment, rendered by a court of general jurisdiction, considered void, on account of the death of the defendant having taken place before the rendition of it; that, at most, it is only voidable. If the death of the defendant will not render a judgment void,

> no reason is perceived why the death of the plaintiff should have that effect."

In *Hayes* v. *Shaw*, 20 Minn., 405, in which the judgment was in favor of a plaintiff who had died before its rendition, it was said, pages 407, 408:

> "While the court ought to cease to exercise its jurisdiction over a party at his death, the neglect to do so is an error to be corrected by some proceeding in the action in which the error occurs, and the judgment, though erroneous, is not on that account to be attacked in a collateral action. In other words, the judgment is voidable when properly assailed, but not void. Freeman on Judgments, Secs. 140, 153; *Warder* v. *Tainter*, 4 Watts, 270; *Yaple* v. *Titus*, 41 Penn. St., 202; *Coleman* v. *McAnulty*, 16 Mo., 173; *Camden* v. *Robertson*, 2 Scam., 508; *Stoetzell* v. *Fullerton*, 44 Ill., 108; *Spalding* v. *Wathen*, 7 Bush. (Ky.), 659; *Loring* v. *Folger*, 7 Gray, 506.
>
> "Most of these cases, as will be seen upon examination, go to the point that even the death of a *defendant* before the rendition of a judgment against him will not make such judgment void.
>
> "If this be so, it would, for obvious reasons, seem that a living defendant, against whom a judgment has been recovered in favor of a deceased plaintiff, ought not to be heard to claim that the same is void."

If we accept Judge Blodgett's suggestion, that the proceedings in the Patent Office were "quite analogous to the condition of pending suit at law on the death of the plaintiff," and treat the patent "as a judgment for or against a dead man," it merely follows that the patent was not void, but at most only voidable. At whose instance was it voidable? Certainly not at the instance of appellees, who have operated under it for many years, holding it out as valid in the strongest ways possible, and securing business and inducing the public to pay money in faith of its validity.

The patent being at most only voidable, two other rules are applicable—(1) that it cannot be attacked collaterally;

and (2) that the party at whose instance it is voidable must be able to show good faith, diligence, and reasons why it would be inequitable to enforce it against him.

The first point, that if the patent was merely voidable it cannot be attacked collaterally, rests on elementary rules or principles; but, not desiring to assert our own views, we call attention to the following authorities:

> "It is a well settled principle of law, that the decree or judgment of a court, which has jurisdiction of the person and subject-matter, is binding until reversed, *and cannot be collaterally attacked.*" *Gray* v. *Brignardello*, 1 Wall., 627, 634.
>
> "The jurisdiction of the court being once established, its subsequent proceedings *cannot be collaterally questioned.*" *Secrist* v. *Green*, 3 Wall., 744, 751.
>
> "Where the court has jurisdiction of the parties and the subject-matter in the particular case, its judgment, unless reversed or annulled in some proper proceeding, is not open to attack or impeachment, by parties or privies, in any collateral action or proceeding whatever. . . . The rule against collateral impeachment applies to every judgment, order, decree, or judicial proceeding, of whatever species, that is not absolutely void." Black on Judgments, Sec. 245, 246.

See, also:

Elliot v. *Piersol*, 1 Pet., 340.
Gunn v. *Plant*, 94 U. S., 664.
Woodman v. *Smith*, 27 Me., 31.
Hendrick v. *Whittemore*, 105 Mass., 23.
Kean v. *McKincey*, 2 Pa. St., 30.
Cody v. *Hough*, 20 Ill., 43.
Reid v. *Holmes*, 127 Mass., 326.
Stoetzell v. *Fullerton*, 44 Ill., 108.
Yople v. *Titus*, 41 Pa. St., 195.

The second point, that the party at whose instance the patent was voidable—if there could be any party except the Government—must be able to show good faith, diligence and reasons why it would be inequitable to enforce the pat-

ent against him, also rests on elementary rules and principles. See

Black on Judgments, Sec. 313.
Milam Co. v. *Robertson*, 47 Tex., 222, 239.
McCormick v. *Hogan*, 48 Md., 404.

In view of all the foregoing, we respectfully submit (1) that the first question should be answered in such a way as to construe the grant in the alternative, as a grant to James Boyle *or* his heirs or assigns, the words "heirs or assigns" including a grantee or grantees in being capable of taking the patent and the grant inuring to his or their benefit; or (2) that the patent, being at most merely voidable, should be construed and held to be enforceable as against appellees.

V.

RIGHTS OF ASSIGNEE AND ADMINISTRATOR.

The second and third questions relate to the rights or position of Thomas L. Rankin under his agreements (1) with James Boyle in his lifetime, and (2) with his widow after his death—the second being whether the agreement of December 2, 1875, should be construed as an assignment to Rankin, and the third whether the patent should be construed as a grant to Rankin as assignee. In one view, the second question includes the third; for if the agreement of December 2, 1875, should be construed as an assignment to Rankin, it would necessarily follow that the patent should be construed as a grant to him as assignee; but the third question differs from the second in that it also extends to or includes questions relating to Rankin's position under his agreement with Boyle made in his lifetime.

By his contract with Boyle, Rankin became at least an equitable owner of a half interest in the invention and pat-

ent. The contract by which he acquired this interest was entered into before the application was filed, and in pursuance thereof Rankin paid all expenses pertaining to the application (3–4, 84). Having thus carried out the contract on his part, Rankin was clearly entitled to a half interest in the invention and patent, and he certainly could not be deprived of this interest by the mere fact of Boyle's death. In our view, the term "assigns," as used in both the statute and grant, is clearly applicable to a party standing in this position.

But Rankin's position is strengthened by his contract with Mrs. Boyle, as executrix *de son tort* (28, 84), by which he acquired an interest—we claim absolute title—in the entire invention. By this contract Mrs. Boyle agreed that, as soon as she should receive $5,000 in the way specified, she would "release and assign to said Rankin any further interest in such patents to be obtained, and the machine then in use." At the time of its execution Mrs. Boyle was acting as executrix *de son tort* of the said James Boyle, deceased (4, 84); so that, whether she then had authority to make this agreement or not, her subsequent appointment as administratrix (5, 85) operated to legalize it, and thus render it in every way as good and binding as if she had all the time been acting as an administratrix duly appointed.

Although informal, the instrument executed between Mrs. Boyle and Rankin, December 2, 1875, amounted to an assignment of the entire interest, the consideration being that Rankin was to pay $5,000 in the way specified. If this instrument had been recorded, it would have been a question whether the patent should not have been issued in Rankin's name as assignee; but probably, as it did not contain a formal request to this effect, it should not have been so issued. The fact that it was not recorded before the patent issued is immaterial so far as Rankin's rights were con-

cerned—the only object of recording being to give notice to third parties, and recording not being necessary "to render an assignment valid as between the assignor and those claiming under him." Robinson on Patents, § 784, and authorities cited in note 5.

In any possible view, Rankin was an assignee under the authority of *Hartshorn* v. *Day*, 19 How., 211, 218, 220, 222, in which it appeared that in consideration "of $1,200 per annum, payable quarterly," etc., Chaffee agreed, as follows:

> "Now, I do hereby, in consideration of the premises, and to place my patent so that in case of my death, or other accident or event, it may enure to the benefit of said Charles Goodyear, and those who hold a right to the use of said patent, under and in connection with his licensees, according to the understanding of the parties interested, nominate, constitute, and appoint said William Judson my trustee and attorney, irrevocable, to hold said patent, and have the control thereof, so as no one shall have a license to use said patent or invention, or the improvements secured thereby, other than those who had a right to use the same when said patent was extended, without the written consent of said Judson first had and obtained."

In considering this agreement, this court, speaking through Justice Nelson, said:

> "In respect to this agreement, whether the title which passed from Chaffee, in the renewed patent to Judson, was legal or equitable, the court is of opinion that the entire interest and ownership in the same passed to him for the benefit of Goodyear, and those holding rights and licenses under him. The instrument is very inartificially drawn, but the intent and object of it cannot be mistaken. . . .
>
> "The court is of opinion that the payment of the annuity was not a condition to the vesting of the interest in the patent in Judson, and of course that the omission or refusal to pay did not give to Chaffee a right to rescind the contract, nor have the effect to remit him to his interest as patentee. The right to the annuity rested in covenant, under the agreement of the

> 12th of November. One of the objects of that agreement was to obtain from Judson this covenant. From the terms and intent of the agreement, the remedy for the breach could rest only upon the personal obligation of Judson, as, by the previous one of the 6th of September, the interest in the patent had passed to Goodyear and his licensees, and no default or act of Judson could affect them. Chaffee chose to be satisfied with the covenant of Judson, without stipulation or condition as it respected the other parties, and he must be content with it."

In the subsequent case of *Day* v. *Union India Rubber Co.*, 20 How., 216, 217, involving the same questions, the court said:

> "The court held, in the case of *Hartshorn et al.* v. *Day*, that under the agreement of the 5th September, 1850, between Chaffee, the patentee, and William Judson, *the entire ownership* in the patent, *legal and equitable*, passed to Judson, for the benefit of Goodyear and those holding rights under him."

The instrument in question executed between Rankin and Mrs. Boyle December 2, 1875, at least amounted to an irrevocable power of attorney, coupled with an interest, giving Rankin full control over the invention; and this was sufficient to make it an assignment.

In Robinson on Patents, Sec. 768, it is said that—

> "An irrevocable power of attorney, giving full control over the patented invention, may vest the entire ownership at once in the attorney named, and however widely differing in form from a conveyance may be a true assignment."

This rule is thus stated in *Day* v. *Candee*, 3 Fisher, 9, 27:

> "It is not necessary that there should be a formal assignment of the right. If there is an agreement, upon a valuable consideration paid, that the party should have the benefit of the right—that it should inure to him, and for that purpose a power of attorney is executed, that is, at least in a court of equity, equivalent to a formal assignment. In such case, the power

> of attorney is a power coupled with an interest, not merely in the execution of the power; not merely an interest in that which is produced by the power, but in the thing itself. *Raymond* v. *Squire*, 11 John., 47."

If the only question, then, was in regard to Rankin's title, would not your Honors hold that the patent enured to him under *Gayler* v. *Wilder*, 10 How., 477, and other cases cited on page 43, *ante*, so as to make him the legal owner of the entire interest—especially would not your Honors hold this if he had paid the full consideration specified? Even if he had not paid such consideration, would not your Honors hold that he was owner of the legal title to the patent, and that Mrs. Boyle simply had a claim against him for damages? It seems to us that, if his assignment had been recorded before the patent issued, this would be the only possible view. Does the fact that it was not then recorded make any difference—no question as to rights of third parties being presented?

But passing the question whether Rankin was assignee of the invention in such form that if his contract had been recorded the Office would have issued the patent to him, it is certainly true that, under both the original and supplemental contracts, he had an equitable title or interest which he could not be deprived of by Boyle's death. In other words, he was at least an equitable assignee of the invention; and in *Hartshorn* v. *Day* this court treated an equitable title of the "entire interest and ownership" as equal to a legal one. In this view, the question presented is whether the patent enured to his benefit the same as if he had held a formal assignment duly recorded. Of course, his assignment not being recorded, the patent could not issue in his name as assignee; but as courts of equity look to substance rather than form, why could it not enure to his benefit as equitable assignee as fully and in the same way as if he had

been legal assignee? In the latter case, the patent would undoubtedly have enured to his benefit, so that there would have been a grantee *in esse* at the time of its issuance. Is he to be placed in any worse position because of the *form* of the instrument through which his title or interest was acquired? As already pointed out, the language of the statute and grant is broad enough to include heir, executor, administrator, assignee in law or assignee in fact; and, especially in view of the comprehensive meaning of the word "assigns" (see authorities cited on pages 47–48, *ante*), a construction ought to be given that would include an equitable assignee. Without doing injustice to any one, such a construction will uphold rights acquired for a valuable consideration, in a fair and ordinary way of dealing. Why, then, should it not be adopted?

The only possible answer to all this is, that not having been previously appointed administratrix, Mrs. Boyle did not then have power to make an assignment; but we respectfully submit that, although accepted by Judge Blodgett, this answer cannot be made without disregarding the fact that she was then acting as executrix *de son tort*, and overriding the rule that "when an executrix *de son tort* takes out letters of administration, *his acts are legalized*, and are to be viewed in the same light as if he had been rightful executor, when the goods came into his hands."

This rule is thus stated in *Magner* v. *Ryan*, 19 Mo., 196, 200:

> "When an executor *de son tort* takes out letters of administration, his acts are legalized, and are to be viewed in the same light as if he had been the rightful executor, when the goods came into his hands. (15 Mass. Rep., 325, *Andrew* v. *Gallison's Executor*; 8 John, 126, *Rattoon* v. *Overacker*.) Letters of administration have relation back to the death of the intestate. 1 Williams on Executors, 334."

We, therefore, submit that, whatever view be taken of

Rankin's interest, whether he be regarded as assignee in law or assignee in equity, his position was such that the patent enured to his benefit, and hence that, under the word "assigns," there was a grantee in being at the time of its issuance. In this view, we respectfully submit that the second question should be answered in such a way as will construe the instrument of December 2, 1875, "as an assignment to Thomas L. Rankin;" and the third in such a way as will uphold the patent "as a grant to Thomas L. Rankin as assignee."

The fourth question is, whether "the patent should be held to be obtained by the authority of Theresa Boyle as administratrix as well as of Thomas L. Rankin?"

The facts on which this question is based are, that Rankin was acting as temporary administrator at the time the patent was issued, and as such in fact obtained the patent (4, 5, 62, 84); that a few months later his temporary letters of administration were superseded by the appointment of Mrs. Boyle as permanent administratrix (5, 62, 85); that as such administratrix Mrs. Boyle subsequently filed an inventory and appraisal of her husband's estate, in which she included the patent in question as held and owned jointly with Thomas L. Rankin (5, 85); and that neither Mrs. Boyle, her children, nor Rankin ever repudiated the proceedings by which the patent was obtained, but enjoyed the beneficial ownership thereof, and sold their interest therein for a valuable consideration (85).

In substance, this fourth question is considered on pages 30–32, *ante*; but, even at the risk of repetition, we respectfully submit that the patent was "obtained" by the administrator within the meaning of section 4896, which provides that, in case of an inventor's death, "the right of applying for and obtaining a patent shall devolve upon his executor and administrator," etc. This section does not require the

grant to be in any particular form, but simply confers upon an executor or administrator authority "to apply for and obtain the patent." The application having been already executed and filed, the authority "to apply for" was properly exercised by taking charge of and prosecuting the same; and the authority to "obtain" the patent was properly exercised by receiving it and holding it in trust for the purposes specified. Notwithstanding section 4884 particularly specifies the form of grant—"to the patentee, his heirs or assigns"—section 4896 is silent as to form. Is not this silence significant? And in view of it, can it be said that section 4896 is mandatory as to form of grant?

We, therefore, respectfully submit that the fourth question should be answered in such a way as will hold that the patent was "obtained by the authority of Theresa Boyle, as administratrix. as well as of Thomas L. Rankin."

VI.

AMENDMENT AUTHORIZED AND NEW OATH NOT REQUIRED.

The fifth question is in reference to the effect of an amendment of the application filed after Boyle's death, and the sixth is whether the patent is "void because no oath was filed after Boyle's death."

The Statute does not require the filing of any new oath after the death of an inventor whose application is filed in the Office during his lifetime. Section 4892 requires that "the applicant shall make oath" to his application; and Sec. 4896 provides that "when the application is *made*" by legal representatives the oath "shall be so varied in form that it can be made by them." In this case Boyle made the oath, and the application was filed in his lifetime—in other words, the application was made by him, and not by his legal representatives, and we, therefore, submit that the

provision of Sec. 4892 applies, and not the provision of Sec. 4896. And what is the reason or necessity for a new oath by a party who in most cases cannot have personal knowledge of the facts, when an oath has already been made by a party having such knowledge?

In this case the amendment is stated to have been "within the scope of the original oath and the invention described in said original specification and by way of limitation of the claims" (85); and that it was of this character is clear from the record of proceedings in the Patent Office (56–58). The case does not, therefore, fall within *Eagleton Mfg. Co.* v. *West, Bradley & Carey Mfg. Co*, 111 U. S., 490. On the contrary, this Eagleton case is believed to have no application to the present question, except in so far as, by direct implication, it is an authority for the position that the amendment was proper, and that no new oath was necessary.

When an amendment presents an *additional* or *new invention*, not within the scope of the original specification, then a new oath is required. If the inventor is living, the new oath must be made by him; if he is dead, it must be made by his administrator or executor. If the amendment, on the contrary, is a *restriction* in the nature of a disclaimer, a limitation and narrowing of the original claim, no new oath is required, whether the inventor be living or dead. The Eagleton case is precisely in accordance with this doctrine. A new oath was required in that case. Why? Because, in the words of Justice Blatchford, the file-wrapper showed "*beyond doubt that there was no suggestion in the specification signed and sworn to by Eagleton* [the deceased] *of the invention described in the amendment filed October 19, 1871*"—*i. e.*, the amendment filed after his death; and the court says that "*in view of the entire change* in the specification, as to the invention described, the patent, to be valid, should have been granted on an application made and sworn to by the

administratrix." Some of the conclusions and reasons given by the Circuit Court for its decision—with which this court says it was "satisfied"—were, that Eagleton did not in fact make "the invention covered by the patent as issued," and that it probably "never came to his knowledge while he lived;" that Eagleton "in the specification which he signed and swore to, did not describe" or "even mention" such invention; and that "the amendments made were not mere amplifications of what had been in the application before."

How does all this apply to the present case? Not at all. The facts are precisely the reverse. In this case, the invention described in the amendment is *the identical invention* sworn to by Boyle, except so far as it is narrowed by disclaiming certain broad features—in other words, it is a "mere amplification [limitation] of what had been in the application before." If Boyle had lived, it is simply absurd to say that a new oath would have been required by him, and it would be still more absurd to say that a new oath was required by his administrator; and the Eagleton case affords not the slightest authority for such a contention, but the contrary.

As already stated, a contract was made before the application was filed, by which "Boyle agreed to assign to said Rankin a half interest in and to said invention and patent;" and after Boyle's death a new contract was made with Mrs. Boyle, who was "then acting as executrix *de son tort*," by which Rankin agreed "to press the application for patents" and by which he was at least to have entire control of Boyle's interest. Rankin performed his part of the contract, and Alexander & Mason "continued to act in the premises under his direction as they had theretofore done, as well as under the authority of said Theresa M. Boyle then vested in him;" the application was "prosecuted by said solicitors under the direction of said Rankin, as afore-

said;" and said solicitors acted "under the authority of said Rankin and Theresa M. Boyle, as aforesaid" (4, 84). In short, after Boyle's death, Alexander & Mason acted under authority (1) of Mr. Rankin, who was temporary administrator and legal or equitable assignee of the entire interest; and (2) of Mrs. Boyle, who was then executrix *de son tort* and afterwards permanent administratrix of her husband's estate.

It is certainly clear, therefore, that Alexander & Mason had direct and unqualified authority from all the parties interested to prosecute the application after Boyle's death. The only questions are (1) as to the *form* of this authority, and (2) as to whether Rankin was authorized to confer it.

As to the first point, it is said that the authority was not conferred in *writing* by power of attorney executed and filed in accordance with the rules of the Office. This may have been an irregularity, but not a fatal one. The Commissioner may make rules for public convenience, but compliance with those rules is not *jurisdictional*. The statute does not make it a condition precedent to a valid patent that, if taken out by an attorney or agent, the authority to such attorney or agent must be in *writing* and filed, or in any particular form. It *was* in writing, because it appears to have been contained in letters, or, as the bill says, "communications" from Rankin to Alexander & Mason, and in an "agreement" between Mrs. Boyle and Rankin; but neither of these writings were in the ordinary form of powers of attorney, and neither of them were filed. There is no authority, it is submitted, that can be found for the position that if a patent is obtained by attorneys authorized *in fact* by the person entitled to obtain it, the omission to supply written proof of that authorization renders the patent void.

The person who is thus entitled to obtain the patent may, therefore, if there is any irregularity in form or otherwise in

the method by which he originally authorized an agent or attorney to obtain the patent, *ratify* the agent's act, and ratification will, in accordance with the universal principle, become equivalent to original authorization. In any possible view, all the parties interested fully ratified all the acts of Alexander & Mason in prosecuting the application after Boyle's death.

As to the second point, it is said that at the time Rankin wrote to Alexander & Mason, and directed them to proceed with the application, his letters of administration had not been issued, and therefore that he himself had no authority to direct Alexander & Mason in reference to proceeding with the application. The answer to this is that, aside from his authority as assignee, his letters of administration were issued before the patent was granted, and that he ratified Alexander & Mason's acts after they were issued, thus in legal effect conferring all the authority upon them to obtain the patent which he himself had as administrator; for it will not be denied that an administrator's authority to obtain a patent is one which he may exercise through the agency of a patent solicitor.

The same statement holds good in respect even to Mrs. Boyle, although she was not appointed permanent administratrix until after the granting of the patent. If it be considered that authority from Mrs. Boyle was required at all, then, so far as her powers as administratrix went, she gave it iu the fullest manner (through Rankin) to Alexander & Mason; and having given it by virtue of being executrix *de son tort* of James Boyle, and entitled to the permanent administration, and having ratified Alexander & Mason's acts after receiving her letters of administration, the ratification amounted to original authorization, and bound her as administratrix, and bound the heirs at law of James Boyle for whom she was the legal representative.

It is admitted that Mrs. Boyle was "acting as executrix *de son tort* of the said James Boyle, deceased," at the time she authorized Rankin to proceed with taking out the patent. This being the case, it follows that her subsequent appointment as administratrix had relation back to the date of Boyle's death, and operated to legalize all her acts in the meantime. As to this, the law is well settled. See *Magner* v. *Ryan*, 19 Mo., 196, 200, and authorities cited.

In view of his contract, Rankin had a clear right to proceed and obtain the patent in any form the law allowed it to issue. He had the same right to represent Boyle's executor or administrator in these proceedings that he had to represent Boyle while living. He could, as the agent of Boyle's administrator or heirs at law, authorize Alexander & Mason to proceed and take out the patent. The personal intervention of any of the legal representatives named was unnecessary, because, as already seen, no new oath or application was required. The employment of a patent solicitor, to do the work usually done by a solicitor, can of course be made by an agent, and neither Boyle's administrators nor heirs at law could have deprived Rankin of his right to take out the patent after Boyle's death. They did not attempt to prevent him. On the contrary, they consented to ratify his acts. When, therefore, Rankin wrote to Alexander & Mason notifying them of Boyle's death, and directing them to proceed and take out the patent, his employment of them was good, and his right to direct the proceedings unquestionable; and for this reason, besides those already given, proceedings in the Patent Office were had under proper authority.

As to this whole subject, it may be said that the requirements above noted, such as the filing of written evidence on the part of the administrator of his authority, or proof of grant of letters of administration, are directory merely, and

if irregular, or omitted altogether, the patent is not thereby vitiated. This has been held even in respect to an applicant's oath in cases where the oath is required. See—

Robinson on Patents, Sec. 458.
Whittemore v. *Cutter*, 1 Gal., 429.
Dyer v. *Rich*, 1 Metc., 180.
Compton v. *Belknap Mills*, 3 Fish., 536.
Hoe v. *Cottrell*, 17 Blatch., 546.
Hartshorn v. *Eagle S. R. Co.*, 18 Fed. Rep., 90–91 and cases cited (reversed, but on another point).

We, therefore, respectfully submit that the fifth question should be answered in such a way as will hold that the amendment filed after Boyle's death, which was "within the scope of the original oath and the invention described in said original specification and by way of limitation of the claims," did not render the patent void; and that the sixth question should be answered in such a way as will hold that a patent may be issued after an inventor's death without the filing of any new oath, except under circumstances which would require a new oath if the inventor were living.

In asking a decision that will answer all the questions certified, in such a way as to protect appellant's interests involved, we are also asking the application of such broad and liberal views as will uphold other patents standing in the same position and generally advance public interests; and we respectfully submit that the case should be considered accordingly.

EPHRAIM BANNING,
For Appellant.

EDMUND WETMORE,
THOMAS A. BANNING,
Of Counsel.

Chicago, November 5, 1892.

147 U.S. 209

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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1892.

Term No. 1099.

THE DE LA VERGNE REFRIGERATING MACHINE COMPANY,
APPELLANT,

vs.

JOHN FEATHERSTONE ET AL.,
APPELLEES.

On a certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF AND ARGUMENT FOR APPELLEES.

L. L. BOND,
C. E. PICKARD,
For Appellees.

HORACE O'DONOGHUE, PRINTER, 192 SOUTH JEFFERSON STREET, CHICAGO.

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BRIEF AND ARGUMENT FOR APPELLEES.

The controversy now presented to the court arises upon a demurrer filed to the bill of complaint. The bill is a very long one, containing a great number of allegations and averments, which were attempted to be supported by exhibits attached thereto. The recitations of the bill and the exhibit of the Patent Office file wrapper and con-

tents with the other exhibits, permitted questions to be brought up on demurrer which otherwise could only have been raised by a plea.

It is our understanding that the case is not open for all of the questions which might be raised upon the record, but is confined to the questions certified up from the Appellate Court, commencing on page 83 of the record.

In order that the law applicable to the facts may be fully understood, we first quote at length the three sections of the statute under which patents are issued, to wit: Sec. 4,884, which is the general section under which a very large proportion of patents are issued; sec. 4,895, under which applications or inventions assigned before the issue of the patent are issued directly to the assignee; and sec. 4,896, which is the section under which patents are issued when the inventor or applicant dies before the grant or issue of his patent. The three sections are as follows:

"Sec. 4,884. Every patent shall contain a short title "or description of the invention or discovery, correctly "indicating its nature and design, and a grant to the "patentee, his heirs or assigns, for the term of seventeen "years, of the exclusive right to make, use, and vend the "invention or discovery throughout the United States, "and the territories thereof, referring to the specification "for the particulars thereof. A copy of the specification "and drawings shall be annexed to the patent and be a "part thereof."

"Sec. 4,895. Patents may be granted and issued or "re-issued to the assignee of the inventor or discoverer; "but the assignment must first be entered of record in the "Patent-Office. And in all cases of an application by an "assignee for the issue of a patent, the application shall

" be made and the specification sworn to by the inventor
" or discoverer; and in all cases of an application for a re-
" issue of any patent, the application must be made and the
" corrected specification signed by the inventor or discov-
" erer, if he is living, unless the patent was issued and the
" assignment made before the eighth day of July, eighteen
" hundred and seventy."

" Sec. 4,896. When any person, having made any
" new invention or discovery for which a patent might
" have been granted, dies before a patent is granted, the
" right of applying for and obtaining the patent shall de-
" volve on his executor or administrator, in trust for the
" heirs at law of the deceased, in case he shall have died
" intestate; or if he shall have left a will, disposing of the
" same, then in trust for his devisees, in as full manner
" and on the same terms and conditions as the same might
" have been claimed or enjoyed by him in his lifetime;
" and when the application is made by such legal repre-
" sentatives, the oath or affirmation required to be made
" shall be so varied in form that it can be made by them."

It only requires a glance at these sections of the statute to see, first, that the patent in controversy was issued under section 4,884, as though the applicant were living when the patent was granted and issued; the second, that the patent should have been issued under section 4,896.

If Congress had left the law standing solely upon the general provision of section 4,884, then there would have been point in appellant's contention. But as Congress did not leave the issuing of patents to dead inventors to stand under that section, but made special provision in section 4,896 for such a contingency, it seems idle to discuss the question as to whether, Congress having made special provision for the issuance of patents to dead inven-

tors, such patents could be issued under the general clause, or section 4,884, regulating the issuance of patents to living applicants.

Congress having made special provision for issuing a patent when the facts are as in this case, the Commissioner of Patents could not issue the patent under the general section applicable only to living applicants.

Section 4,900 also recognizes the distinction of the three sections under which patents may be issued; as it recites: "It shall be the duty of all patentees, and their assigns and legal representatives, etc.," these being the three classes of the three sections; patentees being those whose patents are issued under section 4,884, assigns those whose patents are issued under section 4,895, and legal representatives those whose patents are issued under section 4,896.

Patent Office Rules. The Patent Office Rules in force September 1, 1875, were the rules under which this patent was issued. Rule 1 calls attention to "who may obtain a patent." Rule 2 commences: "In case of the death of "the inventor, the patent may be applied for and will "issue to his executor or administrator." The rule then continues with directions as to assignees who desire patents for inventions issued to them.

Rule 8 is as follows: "8. The application and oath "must be made by the actual inventor, if living, even if "the patent is to issue to an assignee; but where the inventor is dead the application and oath must be made "by his executor or administrator."

In Rule 10 it is provided: "If the application be "made by an executor or administrator, the form of the "oath will be correspondingly changed."

Rule 131 recites that: "Any person of intelligence "and good moral character may appear as the agent or the "attorney in fact of an applicant upon filing a proper "power of attorney."

Rule 133 provides that: "A power of attorney "must be filed in every case, both by original and asso- "ciate attorneys, before such attorney will be allowed to "inspect papers or take action of any kind."

Rule 99 is as follows: "Letters, copies of assign- "ments, or *ex parte* statements in relation to assignments, "are not proper subject-matters for record."

Attention has been called to all of the rules which in any manner affect the matters in controversy, and it will be seen from these rules and from the statute above quoted that in the issuance of the Boyle patent no attention was paid either to the statute or to the commissioner's rules of procedure.

This failure on the part of the office, and, doubtless, on the part of the attorneys, was not willful, but probably arose because neither the Patent Office nor the attorneys were advised of Boyle's death. It will be noted that the rules in force when this patent was issued do not provide for the continuation of a pending application where the inventor or applicant died during such pendency. And if a rule had then existed by which the administrator, upon the filing of a petition and a new oath, could take up the application in the Patent Office where it stood when the applicant died, such a rule would not have changed the law, as its only effect would be to relieve the administrator from paying the first fee a second time. It would not relieve him from the necessity of filing a new oath and a new petition, as will be seen further on.

I.

The first question (p. 84) upon which the Appellate Court desires the opinion or finding of this court is: "Whether the grant to James Boyle, his heirs or assigns, "was void because of the death of Boyle before the "patent was issued, or whether such grant was valid on "the ground that it should be construed in the alternative "as a grant to James Boyle or his heirs or assigns, the "words 'heirs or assigns' including a grantee or grantees "in being capable of taking the patent, and the grant "inuring to his or their benefit."

The patent in question is void because it issued in the usual form to James Boyle, who was dead at the time of the granting of said letters patent, and the Circuit Court was right in sustaining the demurrer.

In support of this position we urge the following propositions of law:

1. All rights and remedies of inventors are based upon the constitution and statutes, which must be followed in order to obtain a valid patent.

Gayler v. *Wilder*, 10 How. 493.
Wilson v. *Rousseau*, 4 How. 674.
Child v. *Adams*, 1 Fish. 189.
U. S. v. *Am. Bell Tel. Co.*, 32 F. R. 591.
Morton v. *N. Y. Eye Infirmary*, 2 Fish. 320.

2. Letters patent for an invention are a "grant."

Viner's Abridg., Title "Prerogative," vol. xvii.
Bacon's Abridg., Title "Prerogative, vol. 8.
Petersdorff's Abridg., Title "Prerogative," vol. 6.

Williams on Personal Property, marg. p. 214.
Bouvier's Law Dict., Title "Patent."
Robinson on Patents, vol. 1, chap. 1, *et seq.*
Kent's Com., vol. 2, p. 368.
Phillip's Law of Patents for Inv., p. 2.
Marbury v. *Madison*, 1 Cranch, 137 (141).
Butterworth v. *Hoe*, 112 U. S. 50.

3. To constitute a valid "grant" *in præsenti*, there must be a grantee *in esse* capable of taking at the time of the grant.

Washburn Real Prop., book 3, chap. 4, secs. 20, 26–34, and authorities cited.
Galloway v. *Findley*, 12 Pet. 264.
Galt v. *Galloway*, 4 Pet. 332 (344–5).
McDonald's Heirs v. *Smalley*, 6 Pet. 261.

4. That in case the grantee be not *in esse*, the words "his heirs" in the statute and in the grant do not name a new class of grantees to take as purchasers, being words of limitation of the estate, and not words of purchase.

Viner's Abridg., vol. xvii. Title "Prerogative," p. 148.
Galloway v. *Findley* (*supra*).
Galt v. *Galloway* (*supra*).
Shaw Rel. Valve Co. v. *City of New Bedford*, 19 F. R. 753.
Bradley v. *Dull*, 19 F. R. 913.
Hodge v. *N. Mo. Ry. Co.*, 4, Fish. 461.
Pelham v. *Edelmeyer*, 25 O. G. 292.

A consideration of the first proposition above laid down will show that by reason of the statutory provisions relating to the granting of letters patent, the patent

in question in this suit is void. The statutes provide in what manner letters patent shall be applied for and granted, and these statutory provisions were not followed in the obtaining of the patent in question in this suit.

All the rights and remedies of inventors are based upon the constitution and laws of the United States. This, as was well said by Judge Blodgett, in his opinion in the court below (p.73), "is a proposition so axiomatic and elementary as to require no citation of authority." They have no rights in their inventions, except as such rights may be expressly given them by statute, and when the statute is silent no right exists.

Child v. *Adams*, 1 Fish. 189.
Morton v. *N. Y. Eye Infirmary*, 2 Fish. 320.
U. S. v. *Bell Telephone Co.*, 32 F. R. 591.

In the case of *Child* v. *Adams* (*supra*), on p. 193, Justice GREER says :

"The power of the Commissioner of Patents to issue "patents, and the effect of them, was carefully defined by "this statute. By defining the conditions under which "the power it confers shall be exercised, it necessarily ex- "cludes all others, except, perhaps, the correction of their "own clerical errors."

The statutes of the United States recognize only three classes of persons to whom letters patent for an invention may issue. These are, first, the inventor himself (see sec. 4,886, U. S. Rev. St.); second, where an assignment is made before the issuing ef letters patent, the assignee of the inventor (Ibid., 4,895); third, the personal representatives of the inventor (sec. 4,896).

Section 4,896 provides that "When any person, "having made any new invention or discovery for which

" a patent might have been granted, dies before a patent " is granted, the right of applying for and obtaining the " patent shall devolve on his executor or administrator, " in trust for the heirs at law of the deceased, in case he " shall have died intestate; or, if he shall have left a " will, disposing of the same, then in trust for his devisees, " in as full manner and on the same terms and conditions as " the same might have been claimed or enjoyed by him in " his lifetime; and when the application is made by such legal " representatives, the oath or affirmation required to be " made shall be so varied in form that it can be made by " them." It seems clear, then, from the wording of the statute itself, upon which, as we have seen, all rights of the inventor must be based, a patent must, in case of the death of the inventor, issue to his personal representative, if it issues at all. The patent in question issued to " James Boyle, his heirs or assigns," and not to his personal representative. The language of the section last quoted is clearly imperative; letters patent can issue, in case of the death of the inventor, to no one except to his personal representative.

It may be claimed that this grant to " James Boyle, his heirs or assigns," should be construed as a grant to the personal representative of James Boyle, James Boyle having died pending the application. This cannot be the law. In the case of *Eagleton Mfg. Co.* v. *West et al.*, 111 U. S. 499, the patent in question was issued directly to the administratrix of the inventor, and the court held (page 505) that the patent was invalid, because it was not issued upon the application of the administratrix. If, then, to make a patent valid when issued to a personal representative of a deceased inventor, it is necessary that the application and oath should be made by the personal represen

tative, and if a patent actually so issued to the personal representative is invalid because of the lack of the application and oath by the personal representative, certainly a patent in which there is no application and oath by the personal representative, and which is issued directly to the dead man himself cannot be *construed* as a valid patent to the personal representative. One cannot obtain by a so-called equitable construction of a grant what he could not legally obtain by direct grant. It seems, then, clear, upon the whole, that upon the face of the statutes themselves this patent, issued to a man who was dead at the time of the issuing of the letters patent, cannot be held valid. If construed as having issued to the inventor himself, it cannot be valid , as we propose to show further along, because he was not *in esse* at the time of the grant. It was not issued to his assigns, the second class of persons recognized by the statute as capable of taking the grant; it was not issued directly to his personal representatives; and if it is to be construed as issuing to his personal representatives it would be invalid, because there was no application and oath by such personal representatives.

This brings us to a consideration of the second, third and fourth propositions above laid down, which show that upon general principles of law applicable to the construction of "grants," the patent in question must be held void.

Letters patent for an invention are a "grant."

In order to present this point in its full force, and to answer the argument of counsel for appellant, we ask the indulgence of the court while we briefly consider the origin, nature and characteristics of letters patent for inventions. Letters patent for inventions create, for a limited term, a monopoly; not an "odious" monopoly,

such as was void at common law, but, nevertheless, a monopoly. So true is this, that in the famous "Statute of Monopolies" (21 Jac. 1) the grant by the king of letters patent for inventions was expressly excepted by Parliament from the inhibition of the statute. Now, the granting of letters patent for inventions is and always has been a part of the royal prerogative, and in all the old law books is considered under this head:

Viner's Abridg., Title "Prerogative," vol. xvii.
Bacon's Abridg., Title "Prerogative," vol. 8.
Petersdorff's Abridg., Title "Prerogative," vol. 6.
Williams on Personal Property, marginal page 214.

"The term 'patent' itself is ordinarily used as descriptive of an instrument whereby some exclusive right is granted by the sovereign power to the person named therein. It is the term which describes the deed or conveyance of lands from the United States or a State to an individual." We quote the above from the opinion of Judge Blodgett in the court below, as it announces in clear and precise terms an uncontroverted fact.

"It was the term originally used in England to describe written instruments emanating from the king, sealed with the great seals, whereby lands, honors or franchises were conferred upon individuals."

Bouvier's Law Dic., Title "Patent."

In this respect, the grant of letters patent for inventions must be considered in *pari casu* with all other grants under the royal prerogative. To be sure, the property in letters patent for inventions is considered as a species of

personal property. But it is an "incorporeal" property, and differs from most other personal property in that it "lies in grant and not in livery"—it is created by grant, under the great seal of state, and can be created in no other way, as is the case with all grants under the royal prerogative.

"From the great trust and confidence reposed in the king "and the high authority with which he is vested, the "law hath inseparably annexed to the crown the "power of granting and disposing of divers rights "and privileges which cannot be granted or estab- "lished by any less authority. Of these there are "some that have no existence till created, such as "franchises, liberties, fairs, hundreds, leets, parks, "warrens, which the king only by his prerogative can "establish."

Bacon's Abridg., vol. 8, Title "Prerogative."

"It is a clear rule that * * * no freehold, interest, "franchise or liberty, &c., can be transferred from "the crown but by matter of record. This is effected "by letters patent under the great seal," &c.

Petersdorff's Abridg., Title "Prerogative," vol. vi., p. 217.

See, also,

Williams on Personal Property, marginal page 214.

Robinson on Patents, vol. i., where the nature of letters patent for invention is fully discussed and authorities quoted.

When created, this property can be transferred only by grant, *i. e.*, by deed of assignment, and not by delivery of possession, as is the case with other personal property. While, therefore, the property right is "personal

property" rather than "real estate," under one of which two heads all property is somewhat artificially classed, yet this property more nearly resembles the so-called "incorporeal hereditaments" of the law than the tangible things generally classed as personal property, the great difference being that one is incorporeal, the other corporeal, the one can be created and transferred only by deed or grant in writing, the other can be transferred by mere delivery of possession. Indeed, it was because of this fact that personal property could be transferred by mere delivery of possession and carried away by the grantee, whose person it followed, that the old rules of common law as to the word "heirs" became inapplicable to the transfer of corporeal personal property. But in the case of property in a patent, which can be created and transferred only by grant and deed of assignment, a kind of property is found which comes in its nature really between "land" or "real estate" and corporeal personal property, and which more closely resembles, as we have said, the "incorporeal hereditaments" of the common law than it does the tangible things of which personal property was originally made up. Indeed, some of the so-called "incorporeal hereditaments," classed under "real estate" in the books, had nothing to do, necessarily, with land; for instance, "officers," dignities," "franchises," "pensions" and "annuities."

Indeed, the very definition of an "incorporeal hereditament" shows that they are not confined to "real" property.

"An incorporeal hereditament is a right issuing out "of a thing corporate (*whether real or personal*) or con- "cerning, or annexed to, or exercisable within, the same."

Blackstone's Com., book II, chapter iii.

Again, it is laid down concerning annuities, that when the annuity was a charge upon the person and not upon the lands of the grantor, if it were granted to a man and his heirs, it was a "fee simple personal"; that though the security was merely personal, yet a man might have a "real estate" in it.

Ibid., book II, chap. iii. p. *40 (Cooley's ed. Note 28).

These incorporeal hereditaments were called "incorporeal" because they were not tangible things that could be felt, taken hold of, seen or actually possessed, and "hereditaments" ("*hæres*," an heir) because they were, during their existence, capable of being inherited, that is, of descending to the heirs of the possessor. Now, both of these qualities the property in letters patent for inventions possesses. It is "incorporeal;" it is, by virtue of the statute, capable of "inheritance," *i. e.*, of descending to the heirs—personal representatives, if the term be preferred—of the grantee. Now, the property in letters patent for inventions, like all incorporeal hereditaments, "*lies in grant*," can be created and transferred only by "grant;" therefore the decisions of the courts of law in reference to "grants" are applicable to the grant of letters patent for inventions, and although those decisions may be decisions in real estate cases, they are decisions as to the nature and requisites of a "grant," and should be applied in the case at bar. When a new case arises, the courts will apply the doctrines laid down in cases to which the case in hand is most similar.

Coming back, then, to a consideration of the second proposition above laid down, we insist that "a patent for "inventions is a *grant by the state* of the exclusive priv-

"ilege of making, using and vending, and authorizing "others to make, use and vend an invention."

Kent's Commentaries, vol. 2, p. 366.
Phillip's Law of Patents for Inventions, p. 2.
Bouvier's Law Dict., Title "Patent."

Indeed, so numerous are the authorities for this definition that a patent is a *grant* by the *sovereign power* of the state, that we cite only those above quoted. We believe that there is not one author who speaks of letters patent for inventions as other than "a grant."

The point of this definition which we wish to emphasize is that a patent for an invention is a *grant*. It is a privilege, a right, a franchise, or a monopoly, *granted* by the state to a person. The grant must be in writing and under the seal of the state. Letters patent of a sovereign power may be for a number of things; there may be a patent for lands, a patent for inventions, in short; in general, "letters patent" are a grant by the sovereign power of a state to a person of some right. Letters patent for inventions, then, differ from other letters patent only in the nature of the subject-matter of the grant, only in the character of the thing granted See the cases of *Marbury* v. *Madison*, 1 Cranch, 137 (page 141), and *Butterworth* v. *Hoe*, 112 U. S. 50, where the court, in arguing the case, considered letters patent for invention and letters patent for land together as being grants of similar nature and subject to the same rules and laws. They should, therefore, as far as the grant itself is concerned, be construed in the same way that any other grant should be construed, at least as far as the necessary parties to such grant are concerned. In this respect the requisites of such a grant must be the same as the requisites of a grant of a

patent for land, or of a deed to land, or a grant conveying land.

Now it is, and always has been, requisite to a grant *in præsenti* (which letters patent for inventions are) that there should be a grantee *in esse*, to take at the time of the grant. It is absolutely essential to the validity of a grant or deed that there should be a grantor and a grantee—a person capable of granting and a person capable of taking. A grant *in præsenti* must be to a person *in esse* at the time of the grant.

Washburn on Real Property, book 3, chapter 4, secs. 26–34, and authorities cited.

This principle is as old as the common law. "A "deed to a person not then living and his heirs would be "void, since the word 'heirs' being a word of limitation "and not of purchase, there is no person to take under "it."

Washburn on Real Property, book 3, chapter 4, sec. 20, page 239.

Following this old rule of law, the Supreme Court of the United States, in the case of *Galloway* v. *Findley et al*, 12 Peters, 264, held that a patent of land to a dead man and his heirs was void. In the case of *Galt et al.* v. *Galloway et al.*, 4 Peters, 332, the Supreme Court of the United States, pp. 344–5, held that under the laws of the United States the location of land in the name of a man deceased at the time of the location was absolutely void. The same ruling was made in the case of *McDonald's heirs* v. *Smalley*. 6 Peters, 261. Under the principles which we contend for, if a grant of land to a person not *in esse* at the time of the grant is void, the grant of letters

patent to a man not *in esse* at the time of the issuing of letters patent is void.

Counsel for appellants, in their briefs in the court below, attempted to liken the estate in a patent for invention to an "estate for years," but we submit that this is not well founded An estate for years is an estate in land for a certain term, and the land exists after the estate for years has expired. There is a "reversion" or "remainder" over after the estate for years ceases; but in the case of letters patent for inventions the monopoly, that is, the *property itself*, is created by the grant, and ceases to exist as soon as the seventeen years for which it is granted have expired. In other words, the property right ceases with, and ceases only with, the destruction of the property itself; the right in the thing and the thing itself go out of existence together. Therefore, the estate exists as long as the property exists.

Again, there is a difference between the letters patent and an instrument conveying a thing in existence; the letters patent *create* the monopoly or property, which had no existence before the letters patent were granted; subsequent conveyances by the grantee simply operate upon the property created by the grant.

It appears from the bill that James Boyle was dead at the time of the grant of the letters patent in question; he was therefore not *in esse*, and under the decisions we submit that if the letters patent are to be considered a grant to James Boyle there can be no possible doubt but that the patent in question is absolutely void *ab initio*. Indeed this does not seem to be seriously questioned.

The controversy in this case, so far as this point goes, then turns upon the word "heirs" in the statute and in the letters patent. What does the word "heirs" mean?

Is it descriptive of a class of persons to whom in the alternative the right shall go, or is it a word which defines the nature of the estate which the grantee shall take — is it a word of "purchase" or a word in "limitation (*i. e.*, definition) of the estate?" If the first position be the correct one, then the patent might be, *were it not for the statutes above considered*, valid; if the second, then it is void because the word adds no new class to take as a "purchaser," *i. e.*, a grantee. We maintain that the second is the true construction to place upon the statute and upon the letters patent; that the words "his heirs" name no new class to take as grantees in case of the inability, from death or otherwise, of the patentee to take; that they are words of "limitation of the estate and not words of purchase."

As we have shown above the grant of letters patent is a grant, out of the royal prerogative — in this country residing in the sovereign power of the state — of a monopoly, and is similar to other grants arising out of the same source, from which it differs only in the nature of the thing granted. It is created by letters patent issued by the sovereign power of the state, under the "prerogative." This was admitted, indeed, by counsel for the appellant. It was said in their brief in the court below: "It is a fran-"chise, a personal privilege, a peculiar statutory license, "and no more real estate than a license to export wool, "or to trade with the Indies, or to make and sell gunpow-"der, or to kill the king's deer on the road to Parliament, "was real estate by the common law." (*Brief, p. 37.*) This admission that the property created by letters patent is a "*franchise*"—"a peculiar statutory *license*," of the same nature as "a license to export wool," to "trade with the Indies," etc., *which is undoubtedly the law*, admits

away the whole case. For, by the common law, all these "licenses," "privileges," "franchises," issued out of the royal prerogative, and ceased, expired, determined upon the death of the grantee, *unless otherwise limited by the terms of the grant which created them.*

"Grant determined by death of the king or patentee."

"Where the king grants to his tenant that his heir after "him shall not be in ward, or grants to an abbot that "the covent [*sic*] shall make an abbot without license "of election, if the tenant dies, his heir shall be in "ward, or, if the abbot dies, the covent [*sic*] shall "not make an abbot without license; for in the one "case the grant expired by the death of the *tenant*, "*because* it was not granted to him and his heirs, "and in the other case because it was not granted to "the abbot and his successors; for when the grantee "is dead, none is alive who can enjoy or plead the "grant."

Viner's Abridg., vol. xvii., Title "Prerogative," p. 148.

To this effect are all the cases, that these "licenses" or "privileges" cease with the death of the "patentee," unless otherwise provided.

In the case of *Wilson* v. *Rousseau*, 4 How. 646 (see p. 675), the Supreme Court evidently takes the same view, for it says: "The *statute* is not founded upon the idea of "conferring a mere personal reward and gratuity upon the "individual, as a mark of distinction for great public "service, *which would terminate with his death*, but of "awarding to him an enlarged interest and right of prop-"erty in the invention itself, with a view to secure to him, "with greater certainty, a fair and reasonable remunera-"tion."

(The italics are ours.)

For this reason the word "heirs" is used in the statute and in the letters patent, to prevent the grant being determined by the death of the patentee. This, also, is admitted by appellants, when it is said, in speaking of the property right conveyed (*Brief, p.* 37), "It "attaches *purely to the person.* It inures to the benefit of "the inventor's legal representatives *solely by virtue of the* "*statute.*" (The italics are ours.) With this statement we coincide. It is the true position and the one for which we are contending. The *right would cease with the death of the patentee were it not for the statute and the word "heirs" in the grant, which follows the statute.* It inures to the benefit of the inventor's legal representatives "solely by virtue of the statute," which the letters patent follow, and the word "heirs" is the only word in the statute (sec. 4,884) which causes it so to inure, for it is the only place in the statute which defines the nature of the estate granted. Other sections make certain provisions as to assignees, but they either apply only to cases in which the assignment is made before issue and direct the issue, or they direct the manner and operation of the assignment. Other sections make provisions as to "personal representatives," but they apply only to cases in which the patentee may have died before the grant, and make certain specific provisions. Section 4,884, providing that "every patent shall contain * * * a grant to the patentee, his heirs or assigns," etc., is the only section which provides that the grant, once issued to the patentee, shall not cease or determine with his death.

This, then, is the reason why the statute and the grant following it provide for a grant to the inventor, "his heirs or assigns." Upon no other construction of the statute can the word "heirs" be given any meaning, and

it is a principle of statutory construction—so old as to need no citation of authorities in its support—that the statute should be so construed as to give effect to every word, if possible. The word "heirs" must be held to have some meaning and effect, and if not descriptive of the nature of the estate taken by the patentee, if it is not introduced for the purpose of preventing a grant which would, without the word, determine at the death of the grantee, from so determining, then it can have no meaning at all; for, if the position be correct, that being purely personal property, the property in letters patent would go to the heirs or personal representatives of the patentee, without any words of inheritance, as is claimed by counsel for appellants, then the word "heirs" is a clear surplusage, and, being unnecessary, has no meaning; the right would not "inure to the benefit of the inventor's legal representatives solely by virtue of the statute," but by virtue of common law.

It is said the word "heirs" means "personal representatives." Suppose it does, for the sake of the argument; the effect is the same, that is, to prevent the right from determining upon the death of the patentee. It is asked, "Suppose the act provided that the patent should "run to 'the patentee, his executors, administrators or "assigns,' would that alter the patentee's own interest in "the patent during his lifetime?" (*Brief, p.* 39). Certainly not; but the words "executors, administrators or assigns" would point out the nature of the estate; they would, equally as well as the word heirs, prevent it from determining by the death of the patentee, by pointing out that it was to exist after his death for the benefit of his "executors and administrators." A grant under the king's prerogative is "*determined by the death of the*

patentee," unless the contrary is expressed. To prevent this, the statute does expressly provide the contrary.

Again, that the word "heirs," as used in the Revised Statutes, 4,884, and in letters patent themselves, is a word of "limitation of an estate" and not a word of "purchase," is evident from the long line of decisions which hold that upon the death of the patentee the title to the patent goes not to the heirs themselves, but to the personal representative of the deceased, in trust for his heirs or devisees. If the word "heirs" were to be construed as a word of purchase, then, being "purchasers," they would be the ones who would take the title; and yet it has been universally held by all the courts that the title goes to the personal representative in trust for the heirs, and not to the heirs directly.

Shaw Relief Valve Co. v. *City of New Bedford*, 19 Fed. Rep., 753.
Bradley v. *Dull*, 19 F. R. 913.
Hodge v. *N. Mo. Ry. Co.*, 4 Fisher, 161.
Pelham v. *Edelmeyer*, 25 O. G. 292, and numerous other cases.

In the cases of *Bradley* v. *Dull and others*, 19 F. R. 913, and *Shaw Relief Valve Co.* v. *City of New Bedford*, Ibid. 753, it was argued that because of the change made by the 22d section of the act of July 8, 1870 (Rev. Stat. 4,884), whereby it is enacted that a patent shall contain "a grant to the patentee, *his heirs or assigns*," the previous legislation having provided for a grant to the patentee, "his heirs, administrators, executors or assigns," that a change was made in the law itself, and that because of this change the heirs took the title to the patent, instead of the personal representa-

tive. But the court in both cases overruled the point, and held that the heirs did not take the title to the patent, but that the personal representative took the title in trust for the heirs. This point could never have been decided in this way if the word "heirs" were to be construed as "a word of purchase," and not a "word of limitation of the estate." This we must emphasize, for if the word "heirs" were to be construed as a word of purchase, and if the heirs could be construed as "purchasers" of the estate or right granted, then the estate or right granted must descend to and be vested in them upon the death of the patentee. Again, the patent is granted to "James Boyle, his heirs or assigns." The words "or assigns" are used in the same context, in the same connection and in the same manner as the word "heirs." If, therefore, the word "heirs" is to be construed as a word of purchase, then the words "or assigns" must be construed as words of purchase, which is clearly absurd The assignees of a patentee can take only by the making of a deed of assignment, a new and separate grant from the patentee, which would not be the case if the assigns took as purchasers.

Counsel argue that the words of the statute and patent should be construed to read "*or* his heirs *or* his assigns," and that, therefore, because a deed to "A or his heirs" is good, the patent is valid. The argument is ingenious, but not quite ingenuous. In the first place, counsel juggle with real estate law in a most astonishing manner. When they find a proposition relating to real estate in their favor they cite it and say it settles the case; when the analogies of real estate law are quoted against them, they say "a patent is personal property," and real estate law does not apply. Again, if the statute is

to be so construed in the disjunctive, and the word "or" in a disjunctive sense is to be construed into it, and into the grant between the words "James Boyle" and "his," then must each class be exclusive of the other, the "heirs" to take only when James Boyle cannot take, and the position that the grant "inures to the benefit of the inventor's legal representatives, *solely* by *virtue of the* statute," is squarely contradicted. The two positions cannot both stand; the first is destructive of the second, the second of the first; and, as we believe we have fully shown, the first is the true statement of the law.

Besides, that this is not the proper construction of the statute is to be seen from the statute itself. Section 4,896 specifically provides what shall be done and to whom the title shall go in case of the death of the inventor before the patent issues. As Congress, therefore, has taken care to specifically point out by a subsequent section what shall be done in case the inventor dies before the patent issues, it cannot be held that sec. 4,884 does it by "construction."

Again, suppose the statute is, as Judge Lowell says, "not drawn with technical accuracy in this particular." (*Shaw Relief Valve Co.* v. *City of New Bedford*, 19 Fed. Rep. p. 754.) The evident intention in introducing the word "heirs" was to prevent the estate from determining upon the death of the patentee, and the word "or" precedes the word "assigns" to provide for the alternative contingency of an assignment by the patentee before his death. In other words the word "heirs" gives to the estate, or right, an "inheritable" or "descendible" quality, and the words "or assigns" make the right an assignable one, which such "privileges" or "franchises" or "licenses" were not at common law without such words. In-

deed, this same wording is found in other cases in statutes, notably in section 9 of the Conveyance Act of Illinois (Rev. Stat., ch. 30), in which, after giving the form of what is known as a "statutory deed," in which the word "heirs" is omitted, the statute goes on to provide: "Every deed in substance in the above form, when other-"wise duly executed, shall be deemed and held a convey-"ance in fee simple, to the grantee, his heirs *or* assigns;" "* * and that he warrants to the grantee, his heirs *and* "assigns," etc. (The italics are ours.) Now, here is the word "or" used in one sentence, and the word "and" in the other, and both evidently in the same sense, as they both define a fee simple which, at common law, was, as is admitted, an estate in a man *and* his heirs, and could be created only by a grant to a man "and his heirs." The word "or" seems to have been used in both cases as marking out a class different from "heirs" who are to take the estate after the grantee's death, if the right has not been assigned.

The grant is to "the patentee and his heirs," *or* to "the patentee and his assigns," according as he may have assigned it or not. The word "and" is usually used in such cases, but the word "or" seems to have occurred to those who drafted the statute as pointing to the "assigns," as a class entirely separate from the "heirs," and taking, under different circumstances—as giving to the right granted an "assignable" quality distinct from and additional to its "inheritable" quality.

It seems clear that the patent must be construed as reading to "James Boyle *and* his heirs or assigns"—to "James Boyle and his heirs," if he dies without assigning, or to his assigns when he shall assign it.

Indeed this point is of so little weight that, after a full argument, it was not even noticed in the opinion of the court below.

It is useless to discuss the case cited by counsel, holding that a deed "to the heirs of a man deceased is valid." This patent is not issued to "the heirs of James Boyle." If it were, another case would be presented from the one at bar.

To sum up the argument upon this point, we maintain that letters patent for an invention are a grant, out of the "prerogative," of a monopoly; that unless it be otherwise expressly provided, in *all* such grants the estate or property granted determines upon the death of the "patentee;" that the words "his heirs or assigns," in sec. 4,884 of the statutes, must be so construed as to have some meaning; that if they have any meaning at all, they are either "words of purchase" or "of limitation of the estate;" that it being undoubtedly the law that the estate granted by letters patent does *not* determine upon the death of the patentee—it is so solely by virtue of these words "his heirs or assigns" in the statute and in the grant itself, which follows the statute; that these words can, therefore, be construed only as "words of limitation of the estate;" that being words of "limitation" and not of "purchase," they create or name no *new class that* can take as grantee in case of the patentee being dead, when the grant issues to him.

If this be so, then there was clearly no grantee *in esse* to take at the time of the grant, and the grant is void. We see no escape from the position. It may be a technical point; but if valid, it is good whether "technical" nor not. "*Ita lex scripta est.*" It is useless to talk about the "hardship;" there is none. Why did not the parties

follow the statute? Having failed to do that, why did they not correct the error? It the patent was void, then it was as if it had never existed; *it never did exist;* and there is no doubt but that the commissioner would have issued—if he would not, could have been compelled by mandamus to issue—another patent in due form and to the proper parties. The points that counsel made about the inability to "reissue" a void patent are not in point. It is not a case of "reissue" of an imperfect existing patent; it is simply the ignoring of a void one and the issuing of a good one in its place.

Abatement of Suits at Common Law. — The court below, page 75, likened the proceeding for a patent in the Patent Office to a suit at law, as follows:

"An application pending for a patent at the time of "the inventor's death seems to me quite analogous to the "condition of a pending suit at law on the death of the "plaintiff. The suit abates at common-law, as a judgment "for or against a dead man would be wholly inoperative "and void."

In appellant's brief this is questioned, but it is, notwithstanding, a correct statement. Blackstone, book 3, 302, referring to various pleas to the jurisdiction, etc., says:

"Or, it may be, that the plaintiff is dead; for the "death of either party is at once an abatement of the "suit." Cooley's Blackstone, v. 2, 301.

In *Green* v. *Watkins*, 6 Wheat. 260, this court held as follows:

"In real or personal actions, at common law, the "death of the parties, before judgment, abates the suit; "and it requires aid of some statutory provision like that "of the 31st section of the judiciary act of 1789, c. 20,

" to enable the suit to be prosecuted by or against the " personal representative or heir of the deceased, where " the cause of action survives."

These authorities fully justify the statement of the court below.

In the case at bar the right to the patent does not survive at common law, for the very good reason that no common law right exists. The statute, however, provides that an *invention* is not necessarily lost by reason of the death of the inventor, and points out a particular method for obtaining a patent in such an event. This method must be as strictly pursued as that provided for an inventor during his lifetime.

Chitty, " Pleading," v. 1 (11 Am. ed.), p. 447, states that among the pleas to the ability of a plaintiff are " that he was dead at the commencement of suit," and " so where " *a sole plaintiff dies* pending his suit such death may be " pleaded in abatement." And this, where the cause of action survives. The mode of overcoming such a plea, or this difficulty, is by following the statute when, as in most if not all of the States, there is one, and if no special procedure is pointed out, the proceeding by or against the deceased person wholly abates, and the commencement of a new suit is necessary. The analogy suggested by the judge seems to be perfect; the application of James Boyle abated at his death and became null and void. His executor or administrator could institute a new proceeding by filing a new application and oath, and then the commissioner would act upon a live application, instead of acting upon one totally abated by the death of the applicant, as in this case.

II.

The certificate recites (p. 84) an agreement between T. L. Rankin and Theresa Boyle, dated December 2, 1875. James Boyle died November 27, 1875, and at the date of this contract there was no administrator. Rankin (p. 4) was appointed temporary administrator March 9, 1876, and Mrs. Boyle full administrator (p. 5) July 5, 1876.

The second question upon which instruction is desired is, "Whether the above quoted instrument should, under "the above facts, be construed as an assignment to Thomas "L. Rankin."

This does not appear to be a difficult question, if the court is called to pass upon the contract alone. But it was contended, and doubtless will be again, that under this paper Rankin was entitled to the patent when it issued, *as the assignee* of James Boyle. We do not see how this contract can be made available by appellant, because if Rankin was the assignee, the patent should have issued under section 4,895, which is special to assignees, instead of under the general clause, section 4,884, as it was.

There are several cases where an assignment has been duly entered of record before the patent issued, sometimes with and sometimes without a request that the patent issue to the assignee, which assignment had been overlooked and the patent issued, contrary to the assignment, by the assignor; and the courts have held that, nothwithstanding this mistake, the assignor could not hold the patent; that it inured to the benefit of the assignee directly upon its issue, notwithstanding the mistake of the Patent Office.

This is sound law, and it is enforced under the rule that all subsequent titles acquired by the assignor inure to the benefit of the assignee, and he will not be heard to assert a later title to the property which he has assigned.

The facts in this case do not warrant the application to it of this rule. James Boyle, and not Theresa Boyle, was the inventor and the applicant for the patent. He alone could have made such an assignment as would authorize the patent to issue to his assignee, so long as the application stood in his name. The record (page 29) shows that this is an agreement between Rankin and Mrs. Boyle personally, and not in their representative capacities; was not recorded until March 17, 1887, or lacking only four days of eleven years after the patent was issued. There certainly can be no charge that the commissioner overlooked such assignment. Even if it had been a complete assignment, with a request to the commissioner to issue the patent to Rankin, it would have been idle to have recorded it in 1887, other rights having intervened.

The paper itself is not an assignment. Its title is "Article of agreement between T. L. Rankin and Mrs. James Boyle." Under this agreement (p. 28) Rankin undertakes to complete an ice machine, which he had commenced with James Boyle, to provide for the maintenance of Mrs. Boyle until the next spring, "say May 1st;" to press the application for patents, to use his best efforts to introduce the same, to divide the profits with Mrs. Boyle until she had received five thousand dollars, after which Mrs. Boyle was to release any further interest in the patent and the machine; to surrender to the control of said Rankin the interest of James Boyle in the ice machine, and his interest in a stock company called The Arctic Ice Company.

There is no sense in which this paper can be classed or treated as an assignment, and there is no allegation in the bill that Rankin ever paid Mrs. Boyle five thousand dollars; and therefore, upon the showing of the bill itself, this paper is null and void, and has never been so far operative as to enable Rankin to demand an assignment of the patent under it.

See

R. R. Co. v. *Trimble*, 10 Wall., p. 382.

Section 4,898 of the statutes provides that "Every "patent or any interest therein shall be assignable in "law, by an instrument in writing; and the patentee or his "assigns or legal representatives may, in like manner, "grant and convey an exclusive right under his patent to "the whole or any specified part of the United States. "An assignment, grant, or conveyance shall be void as "against any subsequent purchaser or mortgagee for a "valuable consideration, without notice, unless it is "recorded in the Patent-Office within three months from "the date thereof."

Rule 100 of the Patent Office rules, then and now in force, is as follows: "In every case where it is desired "that the patent shall issue to an assignee, the assignment "must be recorded in the Patent Office at a date not later "than the day on which the final fee is paid."

Rule 2 provides that where an invention is assigned the patent may be issued to the assignee upon the request either of the assignee or of his assignor.

It will thus be again seen that no attention was paid either to the statute or to the Patent Office rules.

As to what constitutes an assignment, see R. S. sec. 4,898.

Waterman v. *Mackenzie*, 138 U. S., p. 255.

That the Rankin agreement is not an assignment of any kind is fully supported by this case; and, see also

Rice v. *Boss*, 46 Fed. R. 195.

A point is attempted on the allegation of the bill that Boyle in his lifetime agreed to assign one-half of the patent to Rankin. There is no allegation that he did so, or that any claim for such an interest was ever presented against his estate. This court cannot consider any such unwritten *ante mortem* agreement seventeen years after Boyle's death. The statute requires "an instrument in writing."

From the facts and from the authorities it will be seen that it is not possible to hold that Rankin was entitled to the patent when issued, as assignee thereof. In fact, the contention is specifically contrary to the facts set up in the bill that appellant derives its title through Theresa Boyle as administratrix, who, as such administratrix, sold the patent to W. B. Bushnell January 2d, 1878 (p. 30).

This, with the consideration of the first question, disposes of the third and fourth questions upon which instructions were desired, to wit:

"3. Whether the patent should be construed as a "grant to Thomas L. Rankin as assignee.

"4. Whether, under the above-recited facts, the pat-"ent should be held to be obtained by the authority of "Theresa Boyle as administratrix as well as of Thomas L. "Rankin."

The "above-recited facts" are, that after the death of James Boyle (November 27, 1875), to wit, on December 2, 1875, these articles of agreement referred to were made. We do not think the Appellate Court intended to limit the recitation of facts to the dates and to this paper, for it says (p. 85): "It is further ordered that the record as "printed in this cause be also certified up as a full state-"ment of facts upon which the questions and propositions "stated for the instruction desired from the Supreme Court "of the United States are based." From this, as well as from the bill of complaint, we find that Mrs. Boyle was not appointed administratrix until July 5, 1876, or more than six months after the date of this agreement, and over three months after the issuance of the patent; and that Rankin himself took out letters of temporary administration, March 9, 1876, only twelve days before the patent issued. The recitations of the contract show that neither Rankin nor Mrs. Boyle acted in any representative capacity. All that the paper amounts to is an agreement that if Rankin goes on and completes the machine he shall not lose what he has done, and that upon payment of the amount necessary to procure the patent, to support Mrs. Boyle and family until May 1st, and of the further sum of five thousand dollars, she would undertake that he should then own the patent. As it stands, however, it is not even a contract for an assignment, and the parties evidently understood that at that time Mrs. Boyle could not make a valid contract for an assignment, or assign the patent itself, because she was not yet in a position to represent the estate of James Boyle, deceased.

We do not see how the patent can possibly be held to have been obtained by Theresa Boyle as administratrix, until she was an administratrix—as she was not

until July 5, 1876. If appellant's contention is correct, that the patent was properly issued under section 4,884, then there could not be any administrator in the matter, for if the patent went direct to the heirs of James Boyle, then the grantees were living, and no administration which could obtain title to or possession of the patent was possible.

Again, if the patent went direct to the heirs of James Boyle, then the contract of December 2, 1875, between Rankin and Mrs. Boyle was absolutely void, as Mrs. Boyle, not being the owner of the patent, and not representing the heirs, could not make such contract, and, Rankin could not take it from her, as the rule or maxim of *caveat emptor* would apply.

Thomas L. Rankin had no right to the patent when it was issued, as assignee, as he had no assignment of any kind.

Theresa Boyle did not act as administratrix *de son tort* in making the contract with Rankin, as she did not have possession of a patent not then granted or even allowed, and Rankin cannot claim as both assignee and administrator. Rankin kept the patent out of Mrs. Boyle's possession and control until July, 1876.

III.

The fifth and sixth questions are as follows:

" 5. Did such amendment render the patent void ?

" 6. Is the patent void because no oath was filed after " Boyle's death ? "

The first question relates to the following state of facts: Boyle filed his application for a patent November 24, 1875 (p. 3), and he died November 27, 1875 (p. 4). At the time of filing his application he appointed Alex-

ander & Mason as his attorneys. On the 18th day of December, 1875, these attorneys amended the specification and claims, and upon such amendments the application was allowed January 2, 1876, and granted March 21, 1876.

The patent sued on is void, because the application was amended in the Patent Office, pending allowance, after the death of James Boyle, without authority, and without any new application or oath by his personal representatives.

We contend that the patent so issued is void, for the following reasons:

First—Because it was not issued upon any petition or oath of the personal representative. *Eagleton Manufacturing Co.* v. *West Co.*, 111 U. S. 490.

Second—Because the application was changed without authority after the death of the applicant. Ibid.

Third—Because Alexander & Mason acted as attorneys in the application without right or authority. *Hunt* v. *Rousmanier's Administrators*, 8 Wheat. 174 to 232.

Fourth—Because acting as attorneys for a dead man is a manifest absurdity. Ibid. p. 203.

Fifth—Because it does not change matters by reason of the fact that Alexander & Mason signed their own names instead of Boyle's to the amendment, as their act, however signed, must be the act of the principal, and having no principal, the act was void. Ibid. p. 204.

Sixth—Because a changed or varied specification cannot be related back to the original specification. *R. R. Co.* v. *Sayles*, 97 U. S. 563.

Seventh—An application file is a public record which every one is bound to know. *Loom Co.* v. *Higgins*, 105 U. S. p. 594.

Eighth—Because the appellant is as much bound by the record as the appellees are, and both parties are presumed to have acted with full knowledge that they were dealing with or operating under a void patent.

Ninth—Because equity does not relieve against mistake of law except in cases where some legal right is ignorantly surrendered, which rule cannot apply here, as the statute provides a remedy and clearly points out the manner of procedure.

Tenth—Because all rights to a patent are purely statutory, and no common law rights attach until the patent itself is actually issued.

Appellant attempts to explain away the Eagleton case, 111 U. S. 490, upon a point made in that case that the attorneys enlarged the invention and claims of Eagleton after his death. This was only one of the points stated by the court, but, as a matter of fact, the patent was no more enlarged by the attorneys than was the Boyle patent in the case at bar. Eagleton claimed an improvement in furniture springs by japanning them, and did not otherwise explain his invention; and when the Office objected because mere japanning did not amount to invention, the attorneys amended by simply inserting the effect resulting from the process, for Japan varnish could only be applied under a heat of several hundred degrees, and that the heating in japanning improved the character of the spring. The attorneys in that case merely inserted the result of this well-known fact, stated in the original specification, and, in amending the claim, included the effect or result of japanning. There was as much authority for stating the effect of japanning as there was for making the new claims in the Boyle application, for the two claims, which are now a part of the Boyle patent, were not made

by Boyle in his lifetime. And whether they are larger or smaller does not affect the legal status of the patent. They are radically and essentially different, although they may apply to the same picture that Boyle described; but, notwithstanding this, they are new combinations, and combinations are entities.

In the Eagleton case the patent was held to be void not only because of the enlargement of the claim, but because the attorneys therein assumed to act as attorneys for Eagleton after his death, and because there was no application or oath by the administrator. On page 499 the court says: "Although at some time before the issu-"ing of the patent evidence was produced to the Office of "the appointment of the administratrix and of her assign-"ment to the Eagleton Company, yet it is very clearly "shown that there was no *application or oath by the admin-"istratrix.*" On page 498 the the court says: "The "authority given to his attorneys was only to amend that "application, and it ended at his death." The court also says on the same page that it is "satisfied with the con-"clusions arrived at by the Circuit Court, and with the "reasons assigned by it therefor."

The case below is reported 18 Blatch. 218, and 5 Banning & A. 475. In that case the court below, after referring to *Railway Co.* v. *Sayles*, 97 U. S. 554, and quoting therefrom, says: "This case is stronger against "this patent than that there spoken of. Here, *the addition "was made wholly without authority in fact*, while there, "it apparently had the support of the inventors them-"selves all the way through." On page 480 (B. & A.) the court, speaking of the attorneys, says: "They made "the amendments in his name without any authority in "fact, whatever authority they may have supposed they

"had." Further down on the same page the court says: "This application as to the invention for which the patent "issued was made and acted upon as upon the *application* "*and oath of a living person, when there was no such* "*person and could not be any such application and oath.*"

The reasoning here would seem to be that the application itself lapsed and *the oath became a nullity* on the death of the applicant; and this reasoning is clearly founded upon the statute, which does not permit of the issuance of a patent to an administrator without an oath by such administrator. And the fact *that the oath of a dead man is a nullity seems to be the key to the statute.*

We quote the section again in full, with our own italics:

"Sec. 4,896. When any person, having made any new invention or discovery for which a patent *might have been granted*, dies *before a patent is granted*, the right of applying for and *obtaining* the patent shall devolve on his executor or administrator, *in trust for the heirs at law* of the deceased, in case he shall have died intestate; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his lifetime, and when the application is made by such legal representatives, *the oath or affirmation required* to be made shall be so varied in form that it can be made by them."

There is no ambiguity in this section. The law does not make any distinction as to *how* the invention may be identified or as to *where* any description may be found, whether in the Patent Office by a pending application, or among papers left by the deceased. If an application is pending, the administrator may adopt it, or make a new one, but, either way, an administrator's oath is required by the statute, and the patent must be granted *to the ad-*

ministrator " in trust for the heirs at law of the deceased." There is no other law or other way for obtaining a patent for the invention of a deceased person. Heirs at law cannot take title direct.

The present construction of this section of the statute by Patent Office rules and commissioners goes no further than very properly holding that when the invention has been described by a pending application, the administrator may adopt it without going to the expense of a new application, and without going through the formality of making up a new set of papers, or of making an entirely new application; but *it does not*, and cannot, *dispense with a new oath*, for the reason that the Office cannot make rules dispensing with statutory requirements, nor can it breathe vitality into an oath which the law regards as a nullity, the person making it having then no existence, so that perjury could not be charged.

In obtaining a patent right or a copyright, the courts have uniformly held that the statutes must be strictly followed. This was long ago asserted as the law, and it has never been changed or modified, either by Congress or by the courts.

In *Gaylor* v. *Wilder*, 10 How. p. 493, the court says: " The inventor of a new and useful improvement has no " exclusive right to it *until he obtains a patent*. This " right is created *by the patent*. * * * But the dis- " coverer of a new and useful improvement is vested by " law with an *inchoate right* to its exclusive use, which he " may perfect and make absolute by proceeding *in the* " *manner* which the law requires."

On page 494, the court says: " Now the monopoly " granted to the patentee is for one entire thing; it is the " exclusive right of making, using, and vending to

"others to be used, the improvement he has invented, "and for which the patent is granted. *The monopoly* "*did not exist at common law*, and the rights, there- "fore, which may be exercised under it *cannot be regu-* "*lated by the rules of common law*. It is created by "the act of Congress; and no rights can be acquired in it "unless *authorized* by the statute, *and in the manner* the "statute prescribes."

In *Wilson* v. *Rousseau*, 4 How. p. 674, the court says: "At common law the better opinion, probably, is that the "right of property of the inventor to his invention or "discovery passed from him as soon as it went into public "use with his consent; it was then regarded as having "been dedicated to the public as common property, and "subject to the common use and enjoyment of all."

Patents, when not properly granted, are not property of any kind. And, in *Appleton* v. *Bacon*, 2 Black, 699, the court stated that when a patent had been issued to a wrong person, it must be delivered up and canceled. There is no breathing of vitality into it The same rule has been applied to land patents. See *Bell* v. *Herne*, 19 How. 252.

There is much discussion in the briefs for appellant in relation to a grant to the heirs. But all this discussion does not seem to be in point. In *Hodge* v. *N. Mo. Rail-road*, 4 Fish, 162, the court said: "Under the patent "laws, the interest of the patentee passes to the personal "representative, who may apply for an extension or a re- "issue of the patent, and it so remains until properly "assigned. Until assigned, all suits must be brought in "the name of the administratrix; *and the next of kin or* "*heirs have no title or interest in the patent*."

In *Shaw Co.* v. *City of New Bedford*, 19 F. R. 753, the question of heirs and the question of changes between the old and the new statutes are carefully considered. On page 754 the court says: "It seems that this title comes "through an administration of the patentee, and the de- "fendant contends that the grant of a patent by Rev. St., "§4,884, is to the patentee, 'his heirs and assigns,' and "that by the force of these words *a patent descends di- "rectly to the heirs* without the intervention of the ad- "ministrator. *This is a new and somewhat surprising "proposition.* It has never been doubted before that a "patent is personal property which follows the ordinary "course, and goes to the executor or administrator in "trust for the next of kin. The cases take this for "granted."

Further on in the same case it is held that the law in respect to administrators and executors has not been changed by the differences in the statutes.

In *Pelham* v. *Edelmeyer*, 15 F. R. 262, the court, on page 263, says: "Both upon the facts alleged in the bill "and disclosed by the proofs, the letters patent became "the property of Phebe Pelham, as administratrix of the "patentee as a part of his estate. The complainant is the "sole devisee and legatee under the will of Phebe Pelham, "but the will does not purport to bequeath any property "held by her in her representative capacity, and, of course, "*could not vest the title* to such property in the legatee if "it assumed to do so."

In *Shaw Co.* v. *City of Bedford*, before referred to, the court makes another point, or gives another reason why a patent does not go to the heirs, which is that upon proper proceedings it is subject to the payment of debts, and consequently may never go to the heirs at all.

Considerable space is devoted to Rankin in appellant's brief, and to the effect of his acts. It seems hardly necessary to consider Rankin at all, as there is no record proof that he ever acted as administrator in regard to this matter, while there is record proof that he did not. His contract of December 2, 1875, which is one of the exhibits in this case, shows his position exactly, which was that he was to proceed and procure the patent, complete the machine then under way, and pay Mrs. Boyle five thousand dollars for a half interest in the patent. Whatever money he paid to Alexander & Mason and to the Patent Office was paid under this agreement, and was not paid by him as temporary administrator.

The record is also equally clear that, whatever papers he gave to Alexander & Mason, he did not give them a power of attorney, because the record shows that Alexander & Mason acted only as attorneys of Boyle, and did not act as attorneys for Boyle's administrator; and the fact that the patent was issued to Boyle shows conclusively that neither Alexander & Mason nor the Patent Office had any knowledge of the death of Boyle, or of Rankin as administrator. It does not lie in Rankin's mouth to come in *sixteen years later* and swear that what he agreed to do as purchaser he did as administrator.

The record also shows that his appointment (March 9, 1876) as temporary administrator was not made when the supposed instruction to Alexander & Mason was given, as his appointment was not made until after the change in the specification and claims was made by Alexander & Mason, acting as attorneys for Boyle, December 18, 1875.

Referring to the patent, it was asserted by appellant below that "It was obtained by Alexander & Mason, patent "solicitors, acting under the directions of Thomas L.

" Rankin. Shortly after Boyle's death they were informed " of the fact, and directed by Thomas L. Rankin to pro- " ceed and obtain the patent." Rankin's affidavit, made a few days prior to the filing of the bill in this cause, is the only authority for this statement, and it is submitted that the record does not support Rankin's affidavit, and that it is fairly opposed to such affidavit. Alexander & Mason were at that date old and experienced patent solicitors, and if they had been so informed by Rankin they certainly would not have proceeded as they did, nor would they have allowed the patent to issue in the name of a person not then in existence. Neither one of the attorneys is now living, so that their statements cannot be had; but they were instructed in the law, and Alexander at least was a lawyer as well an a patent solicitor. The record is against Rankin, for the record shows that he acted as a prospective owner of a half interest under his contract, and not as having any authority over the estate of James Boyle, deceased. And it was necessary that Theresa Boyle should become administratrix of the estate in order to enable her to carry out her contract with Rankin. Therefore, Rankin, as temporary administrator, is to be entirely laid out of consideration as supposed administrator, for until Mrs. Boyle was appointed no one had authority to dispose of anything belonging to the estate.

The case of *Hoe* v. *Kahler*, and similar cases, cited by appellant, is not in point, for in that case the absence of the oath in the file record was not accepted as proof that it never existed, from the known fact that papers were frequently found missing in the files to which they belong, and, therefore, the court would not presume that no oath had ever been made. But such cases have no

bearing upon the questions under consideration, for the patent was issued in this case to James Boyle upon his oath. Thus, the record is conclusive that no other oath had ever been filed, and no presumption attaches; for the oath upon which the patent issued is found in the file record in this cause.

Much attention is also devoted to the law concerning personal propery, and while patents are personal property and go to the estate (see *Wilson* v. *Rousseau*, 4 How. 675), they follow the laws for transferring real estate, and the statute requires that all transfers of title be made in writing, which must be by the owner of the patent or by some court record. It will hardly be contended that the simple delivery of a patent transfers the title to it, as is the case with ordinary personal property.

After declaring the patent void, the court, in *Densmore* v. *Scofield*, 102 U. S. p. 378, says: "Patents *rightfully* "issued are property, and are surrounded by the same "rights and sanctions which attend all other property. "Patentees, as a class, are public benefactors, and their "rights should be protected. *But the public has rights* "*also. The rights of both should be upheld and enforced* "*by an equally firm hand wherever they come under* "*judicial consideration.*"

In regard to the sixth question, as to whether the patent is void because no oath was filed after Boyle's death, the law seems to be equally clear. The closing paragraph of section 4,896 is: "And when the application is made "by such legal representative, the oath or affirmation re- "quired to be made shall be so varied in form that it can "be made by them."

The Patent Office Rules 8 and 10 require an applica-

tion and oath by the legal representative who desires to procure the patent.

Section 4,892 provides that "the applicant shall make "oath that he verily does believe himself to be the original "and first inventor or discoverer of the art, machine, manu- "facture, composition, or improvement for which he "solicits a patent." The oath is a statutory requirement, and no valid patent can be issued without one. The statute also requires that when an inventor dies this oath shall be taken by his personal representative, so modified that he can make it. The modification given in the forms is substantially this: Boyle in his lifetime, says: "I, James Boyle," etc., while the administrator would say: "I, Theresa Boyle, administratrix of the estate of James "Boyle, deceased, do solemnly swear that I verily believe "that the said James Boyle in his lifetime did invent," etc.

The application died when the applicant died. A new application or a petition and oath, as a revivor, was essential. The patent was issued to a dead applicant on a dead application.

IV.

Notes on Appellant's Points. The points here noted are taken from appellant's brief filed in the United States Circuit Court of Appeals for the Seventh Circuit; and, as a new brief will probably be handed up, reference to pages is omitted.

It was urged in the Appellate Court that appellees were estopped from raising these questions. The question of estoppel can hardly come up on questions certified, as the court certainly is not estopped from asking them.

Two text books and nine cases were cited in the Appellate Court on this question of estoppel. One of the

cases cited went the other way, and neither the cases nor the text books sustained appellant's contention, except one case, where upon a motion for preliminary injunction the court would not hear the defendant dispute the validity of a patent which he had once owned. But even there the court did not intimate that when sued as a trespasser the defendant might not raise this question at the final hearing; it simply refused to hear him on the motion. The rule is well settled that when a party sues another as an infringer, all questions of estoppel *in pais* are waived. The authorities are ample on this question, but we do not cite them as we do not believe this court will consider the question at all, especially as appellant does not derive title from or through any of the defendants in this case. All that is asserted in regard to the three Featherstones is that they are creditors of the defunct Consolidated Ice Machine Company, and that they have the drawings and patterns of said company. All that is asserted against Skinkle is that he was connected with the Boyle Ice Machine Company and the Consolidated Ice Machine Company. He is not charged with doing anything, or attempting to do anything. All that is asserted against Knight and Butz is that they were appointed trustees to bid in the assets of the Consolidated Ice Machine Company in case of a sale, so that they should not be thrown away for nothing. How an estoppel could exist as against such parties, who never had anything to do with the patent either as owners, licensees or otherwise, is beyond comprehension. The facts and the law upon this point are so clearly and concisely stated and applied by the learned judge of the court below in his opinion, that we quote that portion of the opinion here

feeling that we can add nothing to the force of the opinion by restating it — that it justifies itself, and is of itself an all-sufficient answer to all objections.

" Quite a portion of the bill is taken up with allega-
" tions showing or tending to show that the defendant,
" Skinkle, has dealt with the patent, at some time since its
" issue, as a valid patent; that he has held it out to the
" public as valid, and that, in certain proceedings insti-
" tuted in the Patent Office, he made affidavit to its
" validity.

" The bill shows that for a time Skinkle was an officer
" and stockholder in certain corporations engaged in the
" manufacture and sale of ice machines under this patent,
" but it also shows that whatever interest those companies
" had in the patent had terminated before the present
" complainant acquired its title.

" If this patent was void from the beginning, no con-
" duct on the part of Skinkle or those associated with him
" could give it validity. No rule of estoppel can be called
" in to aid these complainants, who, by the showing of
" their bill, did not acquire title from Skinkle or the cor-
" porations with which he is connected, in dealing with
" this patent as against the public, if it was void from the
" beginning.

" That there are cases where parties may, by dealing
" with a patent, estop themselves from denying its validity,
" is undoubtedly true, but none of the cases cited go to
" the extent of holding that any acts of an individual can
" vitalize and make valid a patent which never had vitality
" or took effect as a patent.

" I do not, therefore, see that any force is added to
" the complainant's case by these allegations. If any per-
" son had challenged the validity of this patent in the

"hands of the Boyle Ice Machine Company, or the Con-
"solidated Ice Machine Company, while Skinkle was a
"member of those companies, no acts of his, supporting
"or alleging the validity of the patent, would have been
"in the least material in resisting such challenge.

"As to the defendants Featherstone, the only allega-
"tion of the bill is, that they manufactured ice machines
"for the Boyle Ice Machine Company and the Consoli-
"dated Ice Machine Company, while those companies
"considered themselves entitled by their licenses, or other
"agreements, to the use of the patent.

"They were, at the most, mere employés of the
"principal infringers, and can not possibly be held to have
"either indorsed or validated the patent by their action in
"manufacturing machines such as are described in the
"specifications." (*Record, p. 76.*)

Administratrix de son tort. In the Appellate Court brief it was repeatedly asserted that it was admitted that Mrs. Boyle was administratrix *de son tort* in dealing with the invention before her regular appointment. This statement is made in the bill, but its admission is denied, because there is no better settled rule than that a demurrer does not admit inferences or conclusions of law. Administration *de son tort* is a sort of legal fiction which may or may not be held to grow out of the facts stated. It is a legal conclusion, and, therefore, is not admitted by the fact that the bill is demurred to. It is in fact denied, and we insist that Mrs. Boyle was acting in her individual capacity, without any reference to the estate of James Boyle further than to agree that Rankin might go on and complete a machine; that her contract was not made as administratrix of any kind, and that she did not so sign.

Courts sometimes hold persons as administrators in their own wrong, but such an office or such representative capacity is not recognized by law "among legal representatives," but such persons are discouraged by the law, and are frequently held responsible or punished for so acting. It seems to us, again, to be idle to spend any time over this question.

Bad grace. It was asserted below that it came with bad grace for appellees to make the defense that the patent was invalid. We do not see how this assertion can be truthfully made, as no one of the present defendants, except Skinkle, had ever had anything to do with the patent itself, and all that Skinkle had to do with it was to act as president of corporations which held licenses from S. W. Adams, who then owned the patent for what it was worth.

Again, the De LaVergne Company was just as well advised of the invalidity of the patent before it made its loan to Bushnell, and before it acquired its subsequent assignments, as it is now. The appellant loaned $1,500 on this patent and another one owned by W. B. Bushnell, which he failed to pay, and they took it. The appellant company was organized December 27, 1880. It was not, therefore, organized to operate under this patent. It did not buy this patent for its own use, but took it in simply by forfeiture for the non-payment of its loan.

Skinkle's affidavit. Considerable stress seems to be laid on this affidavit, mainly because Skinkle in 1885 made affidavit that up to that time he had supposed the patent to be valid and had fully believed that it was good and valid, and that it had been regularly issued; which is undoubtedly true, as prior to that time it had not come to his

knowledge that the patent had not been regularly issued and that it was not a valid patent. This is all there is of it, and it has no bearing on the case either one way or the other. As will be seen from the bill, Skinkle's connection with the case is simply historical, as he is not charged with having done anything or attempting to do anything after the corporation licenses expired by limitation.

It will be seen from the record (p. 59), that one Louis Tuffly took out administration in the Boyle estate for the third time, and filed a petition for the cancellation of the letters patent issued to Boyle, No. 175,020, and asked "that letters patent be issued *nunc pro tunc* to the said "Thomas L. Rankin as administrator of said estate, for the "use and benefit of the same, said letters patent to show "on the face of the same said mistake and all other mat-"ters needful in reference thereto." (p. 60).

Tuffly took this course believing that the patent as it stood was void and that, being void *ab initio*, a new patent could be properly issued for the remainder of the term; and Skinkle filed his affidavit for the purpose of showing that there were intervening rights or outstanding rights under the patent which Tuffly was proposing to cancel, for the purpose of protecting the rights or licenses granted under the void patent, in case a new one should be issued. His act has this extent and no more.

Death before and after filing an application. The statute does not make any distinction here, and it is difficult to understand how any such distinction can be made, as the statute says, "Dies before a patent is granted." The grant is the last act performed in the Patent Office when a patent is issued, and any one dying before that time comes specifically within the terms of the statute.

Two commissioners' decisions are cited which relate to this section of the statute (§ 4,896). *Rice* v. *Burt*, 16 O. G. 1,050, was decided in 1879 by Commissioner Paine, in which case one of two joint inventors died after making application for a patent, and the executrix of Rice joined with Burt in filing a new application for the same invention, and asked leave to withdraw the original one. The commissioner was of the opinion that Congress undertook to provide for two classes of cases by providing that the right of "applying" for and the right of "obtaining" the patent should devolve on the executor or administrator; that when the applicant died after applying, the right of "obtaining" only devolved on the executor or administrator; and he was inclined to think that the statute would bear this construction, so that when an application was already filed all that was required was the filing of a petition and new oath in revivor; that under the analogy of a bill of revivor in equity the proceeding was not an original one (when the application was on file), but was simply the revivor of one abated by the death of the applicant. He, however, held that the filing of a new application was the safer course under the statute, and permitted the new application to be filed to take the place of the one pending; and this, although the invention had been assigned and testimony had been taken in an interference proceeding.

Ex parte Smith, 43 O. G. 505, is also cited. In this case Commissioner Hall does not consent to the drawing of a line between "applying for" and "obtaining" the patent, as in such case it might be doubtful whether any patent could be issued when the inventor died after filing his application; but he held that the statute was broad enough to cover a revivor either by petition and oath in

a pending application, or by disregarding the pending application and filing a new one. He says: "Both methods are simply revivals of the original application."

We do not see how appellant can get any consolation from either of these decisions, as in the case at bar no attempt was made to revive the abated application in either of these ways. These decisions also show that the commissioners of patents have not been unmindful of this section of the statute; that applicants have been fully advised of the law; that the Patent Office has acted in harmony with the statute whenever the death of an applicant has been suggested before the patent actually issued.

Appellant devotes considerable space to enlarging upon circumstances under which the statute might work a hardship. But as all parties are fully notified by statute, by the Patent Office Rules, by the decisions of the commissioners and by the decisions of this court, notably in *Eagleton Mfg. Co.* v. *West Co.*, 111 U. S. 490, appellant cannot be heard to make this plea, as the difficulties noted can only occur by an ignorant or willful disregard of the law.

The grant. Appellant endeavors to make a point on the change in the wording of the grant between the acts of 1836 and § 4,884 of the Revised Statutes on the authority of *Shaw Relief Valve Co.* v. *New Bedford*, 19 F. R. 753, and *Bradley* v. *Dull*, Ibid. 913. The statute of 1836 (§ 5) provided that the grant should run "to the "applicant or applicants, his or their heirs, administrators, "executors, or assigns," while the act of 1870, which was carried into the Revised Statutes, omits the words "administrators, executors," and is as follows: "To the patentee, his heirs or assigns." The question raised in these cases was whether—these words being omitted—

the patent did not pass direct to the heirs upon the death of the patentee, without going to the administrator or executor. Neither of these cases support appellant's contention that the courts held the word "heirs" to include administrators. The courts held that the omission of these words did not prevent the title to a patent issued to the inventor in his lifetime from passing to an administrator or executor in the event of his death, and that the omission of these words from the grant itself did not change the law, and did not prevent the title to a subsisting patent from passing to the administrator or executor on the death of the patentee. They do not support appellant's contention that a grant under section 4,884 to a person not *in esse* is a grant to the administrator, or that section 4,896 of the statutes may be safely ignored.

The grant elliptical. We have hereinbefore considered the grant from this view, but it is not necessarily elliptical; and as hereinbefore contended the words "James Boyle, his heirs or assigns," simply show that the right granted was inheritable and assignable. And if the true meaning of the grant is to be stated in full, it would be substantially as follows: "To James Boyle, to descend "to his heirs, in the event of his death, or go to his assigns "when sold." In view of the fact that the statute provides for the precise contingency which arose in this case, it seems to us idle to discuss this question, as appellant's trouble is that the statute was wholly disregarded, and its difficulties do not arise out of or under other sections of the statute.

Carpenter v. *Rannels*, 19 Wall. 138, is cited as overruling some earlier decision cited by appellee; but an examination of the case will show that it does not do so.

In this case there was a "grant to A, *or his legal representatives*" * * * * "the *habendum* of the patent being to the said A. '*or his legal representatives, and to his or their heirs and assigns forever.*'" (The italics are in the syllabus quoted from.)

It will be seen that in this case and other similar ones cited by appellant, the grant was peculiar and made so upon the advice of the Attorney General, which advice was soon thereafter carried by Congress into an Enabling Act. As there is no such peculiar grant in the Boyle patent and no Enabling or Curative Act by Congress, this case and the similar ones cited are not in point.

Mistakes in name. Appellant's class of cases cited under this head are not in point, as there is no mistake in regard to the name of James Boyle, and no misunderstanding as to who was intended. The mistake is not in name, but it lies solely in a disregard of the statute in this case made and provided.

Attorneys. On page 69 of appellant's brief it is contended that Alexander & Mason acted under the authority of Rankin as temporary administrator and of Mrs. Boyle, "who was then executrix *de son tort.*" The allegation of the bill is that Mrs. Boyle was "executrix *de son tort.*" How this can be when Boyle left no will we leave for appellant to explain; but as before stated, Rankin was appointed temporary administrator March 9, 1876, and Mrs. Boyle full administratrix, July 5, 1876, while Alexander & Mason made their amendment December 18, 1875. (*Record, p. 58.*) So that the facts do not support this claim or assertion.

It is also stated on the same page, "The only questions are: (1) As to the *form* of this authority; and (2) "as to whether Rankin was authorized to confer it."

Neither of these questions can properly arise. How can this court pass on the "form" of Rankin's authority when no authority of any kind appears from the certified file wrapper of the Patent Office proceedings? And how could Rankin be authorized to confer any authority in December, 1875, when his appointment as even temporary administrator was not made until March, 1876?

The claims. Appellant has attempted to make some point on the nature of the original and the amended claims, and as they do not appear in either brief we here repeat them. The original claims (p. 57) were as follows:

"1. A single-acting pump for liquefying gas for ice "machines, in which the gas to be compressed has a free "passage into the pump over the piston head, as well as "through the inlet valve under the piston head, where it "is compressed, thus doing away with the necessity of "having a valve in the piston head, as set forth.

"2. In a pump for liquefying gas for ice machines I "claim the removable cages H H', with the valve seats, "valves and guides, substantially as and for."

The amended claims filed December 18, 1875 (p. 58), are the ones which appear in the patent, and are as follows:

"*First*—In combination with the cylinder A and its "head B B' I claim the solid piston-head C, the tube G, "extending the entire length of the cylinder, the air "tubes G^1 and G^2, air inlet *a*, cages H H', having valves "I I', and the outlet G^3, all constructed substantially as "and for the purposes herein set forth.

"*Second*—In combination with the cylinder A and air "tube G^2 I claim the removable cages H H', provided "with spring valves and exterior screw-threads and